



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 532

Tribunal File Number: AD-17-95

BETWEEN:

**P. P.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Janet Lew

Date of Decision: October 12, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated December 12, 2016, which determined that the Applicant was ineligible for a Canada Pension Plan disability pension, as it found that he had not had a severe disability as defined by the *Canada Pension Plan* by the end of his minimum qualifying period on December 31, 2013. The Applicant submits that the General Division made several errors.

### ISSUE

[2] Does the appeal have a reasonable chance of success?

### ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[4] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] Initially, the Applicant argued that the General Division erred under each of these grounds, although did not particularize his claims, other than to state that the General Division decision “[was] intertwined that any one error would render the entire decision without basis.” The Applicant also provided further copies of opinions from his family physician and from a sports medicine specialist. The General Division had copies of these expert opinions, referring to them at paragraphs 13 and 14 of its decision.

[6] In response to a request from the Social Security Tribunal for further information, the Applicant provided further submissions. He wrote that the General Division failed to correctly recognize the following:

- “the severe and prolonged nature of ongoing episodes of sharp prostrate pain, sensitivity to light and resulting Migraine headache, a fall which resulted in hospitalization and major head trauma.”
- “episodes of severe and prolonged frozen shoulder pain with restriction of movement which takes 3-6 months before reasonable movement is restored.”
- “severe and prolonged ongoing pain and severe injury to the right knee and a torn [anterior cruciate ligament] which totally prevents all physical work, limited ability to stand, pivot and walk.”
- “severe and prolonged forgetfulness and ability to focus on tasks while taking medicines.”
- “that all employers will not hire a person with severe and prolonged disability on the grounds of liability resulting from fall, sensitivity to light and migraine headache, frozen shoulder pain and restricted movement that severely prevents completing even the smallest task using only one arm.”

[7] The Applicant remarks that he has several serious health impairments that provide a severe and prolonged barrier to employment.

[8] Essentially, the Applicant disagrees with the General Division's assessment and interpretation of the medical evidence and is urging me to conduct my own assessment. Some measure of deference is owed to the General Division. As the primary trier of fact, it is best-positioned to assess and make findings on the evidence and determine whether, after considering the medical evidence on a cumulative basis, it could lead to a finding that an appellant's disability was severe and prolonged on or before the end of his or her minimum qualifying period and that it is likely to be long continued and of indefinite duration or likely to result in death. Furthermore, subsection 58(1) of the DESDA provides for only limited grounds of appeal. It does not allow for a reassessment or rehearing of the evidence: *Tracey*.

[9] I have reviewed the General Division's decision, to ensure that the member considered the totality of the medical evidence, as the Applicant has outlined. The Applicant notes that he has sharp prostrate pain, migraine headaches, frozen shoulder pain, pain in his right knee and a torn anterior cruciate ligament, as well as medication-induced cognitive issues involving forgetfulness and an inability to focus on tasks. He also describes having certain restrictions and limitations. The General Division addressed each of these medical conditions or complaints, other than the headaches. There was no reference to the Applicant's migraine headaches or light sensitivity in the General Division's analysis. The General Division noted the Applicant's oral testimony that, since his fall in September 2016, he had been experiencing ongoing headaches. Given that this fall and the resulting symptoms, including headaches, occurred well after the minimum qualifying period had passed, the General Division did not err in considering whether the headaches had caused or had contributed to him being severely disabled at his minimum qualifying period. (The Applicant has had other falls, but there is no indication in the medical records that they resulted in any headaches, and, in any event, they all occurred after the minimum qualifying period had passed.)

[10] I have also reviewed the hearing file and, after comparing it to the General Division's decision, am satisfied that the member did not overlook or possibly misconstrue any important evidence.

## **CONCLUSION**

[11] Given the foregoing considerations, the application for leave to appeal is refused.

*Janet Lew*  
Member, Appeal Division