



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. C. v. Minister of Employment and Social Development*, 2017 SSTADIS 567

Tribunal File Number: AD-17-547

BETWEEN:

**T. C.**

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: Valerie Hazlett Parker

Date of Decision: October 30, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On May 11, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was not payable. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on August 1, 2017.

### ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operations. According to subsections 56(1) and 58(3) of the DESD Act, an appeal to the Appeal Division may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal. Subsection 58(1) of the DESD Act sets out the only grounds of appeal that can be considered to grant leave to appeal a General Division decision:

- 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 made in a perverse or capricious manner or without regard for the material before it.

[3] Hence, I must decide whether the Applicant has presented a ground of appeal under section 58 of the DESD Act that may have a reasonable chance of success on appeal.

[4] The Applicant argues that the General Division decision contains errors of law. First, she disagrees that Dr. Mahmoodi's conclusions were equivocal or not persuasive. She also disagrees with how the General Division weighed the evidence from Dr. Gandhi. She did not, however, allege that the decision misstated this evidence. This argument asks the Appeal Division to retry the matter to reach a different conclusion. In *Gaudet v. Canada (Attorney General)*, 2013 FCA 254, the Federal Court of Appeal decided that a reviewing tribunal is not

to retry the issues. Disagreement with how the medical evidence was weighed is not a ground of appeal that may have a reasonable chance of success on appeal.

[5] Next, the Applicant asserts that had her conditions been considered along with her age, lack of diverse work experience, failed attempts to return to work, inability to continue part-time volunteer work, and treatment limitations, she would have been found to be disabled (see *Villani v. Canada (Attorney General)*, 2001 FCA 248). I agree that it would be an error for the General Division not to have considered these things. However, the General Division decision contains a thorough examination of the Applicant's paid work experience before and after her knee surgeries, as well as her continued volunteer work at the hospital. The decision also noted the Applicant's formal education, and skills learned through her work. This ground of appeal does not have a reasonable chance of success on appeal.

[6] Finally, the Applicant argues that the decision did not consider all of her impairments in their totality (*Bungay v. Canada (Attorney General)*, 2011 FCA 47). I agree that it would be an error if this were so. However, the decision contains a summary of all the relevant medical evidence and testimony. In addition, paragraph 56 specifically considers the Applicant's medical conditions aside from her knees and finds, based on the evidence, that they played a minor role in her overall condition. This argument also does not disclose a ground of appeal that may have a reasonable chance of success on appeal.

[7] A review of the documentary record, including reports from the Applicant's family physician and orthopedic specialist, also makes it clear that the General Division did not overlook or misconstrue any important evidence.

## **CONCLUSION**

[8] The Application is refused as the Applicant has not presented a ground of appeal that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker  
Member, Appeal Division