



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. W. v. Minister of Employment and Social Development*, 2017 SSTADIS 568

Tribunal File Number: AD-17-556

BETWEEN:

**C. W.**

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 2, 2017, the General Division of the Social Security Tribunal of Canada 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 Appeal Division of the Tribunal on August 2, 2017.

### ANALYSIS

[2] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (QL). The Federal Court of Appeal has also found that an arguable case at law is akin to whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[3] The *Department of Employment and Social Development Act* (Act) governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (the section is set out in the Appendix to this decision). Therefore, I must decide whether the Applicant has presented a ground of appeal under s. 58 of the Act that may have a reasonable chance of success on appeal.

[4] The Applicant presents three grounds of appeal. First, she submits that the General Division failed to consider whether she was disabled in a “real world context” as required by the *Villani v. Canada (Attorney General)*, 2001 FCA 248, decision, as it did not consider the impact that her personal circumstances, including age, education and lack of computer skills, would have on her ability to work in the contemporary marketplace. The General Division considered this. The decision states that the Applicant is obliged to do more than simply assert that she would not be able to work regularly because of her condition and her personal circumstances, and it concluded that there was no evidence to support the contention that her personal characteristics prevented her from working. This argument is not a ground of appeal that may have a reasonable chance of success on appeal.

[5] Next, the Applicant argues that the General Division erred by not considering the totality of her medical conditions. The decision summarizes all the evidence that was before the General Division, including the written materials and the testimony. From this, it is clear that the Applicant suffered from limitations in her right knee, as well as from chronic pain. The Applicant also had other conditions that were not being treated medically, and there was no evidence on which the General Division could conclude that these conditions were disabling. The General Division considered the Applicant's capacity to work in this context. I am not satisfied that this argument discloses a ground of appeal that may have a reasonable chance of success on appeal.

[6] Finally, the Applicant argues that the General Division decision contained an error of fact made in a perverse or capricious manner, as it concluded that the only practical limitation the Applicant had was the need to stand periodically. She asserts that there was evidence of other limitations. The Applicant did not set out what those other limitations were. A review of the documentary record indicates that the medical evidence prior to the Minimum Qualifying Period concerned the Applicant's ongoing knee problems and a functional capacity evaluation, which discussed limitations because of her knee problems. No other conditions were investigated or treated. The General Division decision reached this same conclusion. I am not satisfied that this argument discloses a ground of appeal that may have a reasonable chance of success on appeal.

[7] A review of the documentary record also satisfies me that the General Division did not overlook or misconstrue any important evidence.

## **CONCLUSION**

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

Valerie Hazlett Parker  
Member, Appeal Division

## **APPENDIX**

### **Department of Employment and Social Development Act**

58. (1) The only grounds of appeal are that

(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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.