



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 570

Tribunal File Number: AD-17-570

BETWEEN:

K. P.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: October 30, 2017

REASONS AND DECISION

INTRODUCTION

[1] On May 17, 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 14, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. 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.

[3] The only grounds of appeal available to the Appeal Division under the DESD Act are 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] Subsection 58(2) of the DESD Act provides that leave to appeal is to be refused if the Appeal Division is satisfied the appeal has no reasonable chance of success.

[5] Consequently, 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.

[6] The Applicant presents two grounds of appeal. First, she argues that the General Division failed to observe the principles of natural justice and procedural fairness. The Applicant attended the hearing and brought letters that her treating doctors had penned two days prior. She contended that the Tribunal member had permitted her to read the documents into the record but that he had not given her any opportunity to file them with the Tribunal after the hearing. She submits further that the decision states that very little weight was given to this evidence, as it was read into the record and was thus hearsay. The Applicant submits that the General Division should have given the Applicant an option to file the documents after the hearing, and that it should have advised her that it would strictly apply the evidentiary rules regarding hearsay evidence.

[7] The Applicant is correct that the General Division must observe the principles of natural justice. This means that each party must have full opportunity to present their case, know and meet the case against them, and have an impartial decision maker decide the matter based on the facts and the law. These principles do not also require a member of the General Division to give advice or procedural assistance to a party. The Tribunal member with carriage of the matter must remain an impartial decision maker and, consequently, cannot advise any party appearing before him. The General Division made no error if it did not give procedural advice to the Applicant in this case.

[8] Hearings must also be procedurally fair. The Tribunal member presiding at a hearing controls the process at that hearing. In this case, the Tribunal member made no error by permitting the Applicant to submit evidence orally at the hearing and not in writing. Even if it is common practice to permit parties to file written documents after a hearing, it is not mandatory. In fact, the Applicant is presumed to have filed all her written evidence with the Tribunal at the time that she filed a Notice of Readiness, which was done long before the hearing date. However, I am satisfied that, if what the Applicant contends is true, that she was permitted only to read the documents into the record, and then little weight was given to this evidence because it was read into the record, the General Division may not have observed principles of procedural fairness. This is a ground of appeal that may have a reasonable chance of success on appeal.

[9] The Applicant also contends that the General Division decision contained an error, as it did not find that her condition was prolonged at the Minimum Qualifying Period. She contends that this was an error in law, or an erroneous finding of fact made without regard to all the material that was before the General Division. I am not satisfied that the General Division decision on this issue is an error in law. However, I am satisfied that this finding of fact may have been made without regard to all the material before the General Division. It appears that the General Division considered, mainly, her condition at the Minimum Qualifying Period and the hearing date, and not the entire time that she exhibited symptoms. This is also a ground of appeal that may have a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is granted, as the Applicant has presented grounds of appeal that may have a reasonable chance of success on appeal.

[11] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division