



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. K. v. Minister of Employment and Social Development*, 2017 SSTADIS 586

Tribunal File Number: AD-17-139

BETWEEN:

C. K.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: November 1, 2017

REASONS AND DECISION

DECISION

[1] The application for leave to appeal (Application) is refused.

OVERVIEW

[2] The Applicant, C. K., seeks a disability pension under the *Canada Pension Plan (CPP)*. She maintains that adhesive capsulitis, calcification, a partial rotator cuff tear, pain in the shoulders and neck, seizure disorder, irritable bowels and the side effects of her medications prevent her from working. She last worked regularly in 2012.

[3] The Respondent, the Minister of Employment and Social Development, denied her request, because while the Applicant had certain restrictions due to her medical condition, the information did not show that those limitations prevented her from doing some type of work.

[4] The Applicant must establish a severe and prolonged disability before the end of her minimum qualifying period (MQP) on December 31, 2014, to qualify for a CPP disability pension.

[5] The General Division of the Social Security Tribunal of Canada found that there was evidence of work capacity at the time of the Applicant's MQP and that the Applicant had not shown that efforts at obtaining and maintaining employment had been unsuccessful by reason of her health condition. Therefore, the Applicant did not demonstrate that her disability was severe and prolonged by the end of her MQP.

[6] The Applicant filed an Application to the Appeal Division stating that the General Division did not take into account certain facts in the appeal record.

[7] I find that the appeal does not have a reasonable chance of success, because the General Division did consider the parts of the evidence that the Applicant alleges were overlooked.

ISSUE

[8] Is there an argument that the General Division made serious errors in its findings of fact because it failed to take into account (a) her age and low education level, (b) the side effects of her medications, (c) that her chronic pain symptoms were present prior to the MQP, or (d) certain medical reports?

ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can only proceed if leave to appeal is granted.¹

[10] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?²

[11] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

Is There an Argument That the General Division Made Serious Errors in Its Findings Of Fact?

[12] The Applicant's primary ground of appeal is that the General Division erred in law and made serious errors in the findings of fact because it failed to take into account certain evidence in the appeal record.

¹ *Department of Employment and Social Development Act* (DESD Act) at subsections 56(1) and 58(3).

² *Osaj v. Canada (Attorney General)*, 2016 FC 115 at paragraph 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208 at paragraph 36; *Glover v. Canada (Attorney General)*, 2017 FC 363 at paragraph 22.

³ DESD Act at subsection 58(1).

⁴ DESD Act at subsection 58(2).

[13] I have reviewed the General Division decision, and I find that it did consider the Applicant's age and education level, the side effects of her medications, that her chronic pain symptoms were present prior to the MQP and the medical reports referred to in the Application.

[14] Age and education level: The General Division decision refers to the Applicant's age and education level.⁵

[15] Side effects of medications: The General Division decision notes that the Applicant reported side effects of her medications and their impact on her ability to work.⁶

[16] Chronic pain symptoms: The General Division decision refers to the evidence of the Applicant's chronic pain symptoms.⁷ It accepted that the Applicant had chronic pain before the end of her MQP.⁸

[17] Certain medical reports: The General Division decision summarizes a physiotherapist's report in July 2013 and Dr. Wolff's April 2015 report, the reports that the Applicant points to in paragraphs 17 and 35 of the General Division decision.

[18] I have also considered the documentary record. My review does not indicate that the General Division either overlooked or misconstrued important evidence. There is no suggestion that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact that the General Division, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it.

[19] While the Applicant is dissatisfied with the findings that the General Division drew from the above-noted evidence, the General Division did not fail to take these parts of the evidence into consideration. The General Division weighed the evidence and gave reasons for its analysis of the evidence. These are the General Division's proper roles.

⁵ General Division decision at paragraphs 11, 38, 63 and 64.

⁶ *Ibid.* at paragraphs 11, 12, 36, 46, 48, and 58.

⁷ *Ibid.* at paragraphs 13 and 29.

⁸ *Ibid.* at paragraph 53.

[20] Therefore, the argument that the General Division made serious errors in its findings of fact because it failed to consider certain parts of the evidence does not have a reasonable chance of success.

[21] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[22] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division