



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 588

Tribunal File Number: AD-17-593

BETWEEN:

**C. S.**

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: November 1, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On May 26, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant had not presented new facts within section 66 of the *Department of Employment and Social Development Act* (DESD Act), so his application to rescind or amend the General Division decision of December 2016 was dismissed. The Applicant filed an application for leave to appeal with the Tribunal's Appeal Division on August 25, 2017.

### ANALYSIS

[2] The 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 that the appeal has no reasonable chance of success.

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

[6] The issue before the General Division in this case was whether the Applicant had presented new facts such that the prior General Division decision should be changed. The General Division correctly set out the legal test for a document to meet to be considered a new fact. It applied that test to the information presented as new facts and decided that it did not meet this test. In the application for leave to appeal, the Applicant contended that this decision was based on erroneous findings of fact contrary to subsection 58(1) of the DESD Act. In support of this, he set out evidence that supported his disability claim, including that he had to move to live with his family, could not work from home, had limited sitting tolerance, required assistance with self-care, tried different medications and other treatments without success, etc.

[7] In an application to rescind or amend a decision, the General Division must first consider whether the new information proffered meets the legal test for new facts under the DESD Act. If this test is not met, the application must be dismissed, and the General Division need not consider whether the prior decision should be changed based on its merits. In this case, the General Division correctly set out the legal test to be met and applied it to the information proffered as new facts. The General Division concluded that the legal test was not met. The repetition of facts to support the Applicant's claim that he was disabled does not point to any ground of appeal under the DESD Act.

[8] I have also reviewed the written record and am satisfied that the General Division did not overlook or misconstrue any important evidence.

## **CONCLUSION**

[9] I am sympathetic to the Applicant's difficult situation. However, the Tribunal cannot make decisions based on compassionate grounds.

[10] The application for leave to appeal 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