



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. G. v. Minister of Employment and Social Development*, 2017 SSTADIS 613

Tribunal File Number: AD-17-630

BETWEEN:

**D. G.**

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 6, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On June 13, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on September 14, 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.

[3] Subsection 58(1) of the DESD Act sets out the only grounds of appeal that can be considered by the Appeal Division. They are that the General Division failed to observe the principles of natural justice, erred in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it (see Appendix to this decision).

[4] Subsection 58(2) of the DESD Act provides that leave to appeal is refused if the appeal has no reasonable chance of success.

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

[6] The Applicant submitted a long and detailed Application, setting out numerous grounds of appeal. In *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal indicated that it is not necessary for the Appeal Division to address all the grounds of appeal an applicant raises. Because I have found that some of the grounds of appeal, based on a failure to observe the principles of natural justice and on errors of law, have a reasonable chance of success on appeal, I have not considered in this decision the other grounds of appeal presented by the Applicant.

[7] The principles of natural justice are concerned with ensuring that each party to an appeal has the opportunity to fully present their case, to know and answer the case against them and to have the decision made by an impartial decision-maker based on the law and the evidence. The Applicant argues that leave to appeal should be granted because the General Division member did not permit his representative to question him on important issues regarding his disabilities. This prevented him from fully presenting his case at the hearing. The General Division decision does not reflect this. However, if the Applicant is correct and he was not able to fully present relevant evidence and/or arguments to support his case, this would be a breach of the principles of natural justice. This ground of appeal may have a reasonable chance of success on appeal.

[8] The law is clear that when a claimant retains the capacity regularly to pursue substantially gainful work, they should demonstrate that efforts to obtain or maintain work failed because of their disability. The Applicant argues that the General Division erred in law because it did not consider his reasonable explanation for not retraining or pursuing work within his limitations. The decision considered the evidence regarding the Applicant's cognitive limitations and how they might impact his ability to work or retrain. It did not, however, consider whether the Applicant could afford to retrain, which may be a reasonable explanation for not doing so. This may be an error of law. This ground of appeal may also have a reasonable chance of success on appeal.

[9] The law is also clear that all of a claimant's disabling conditions must be considered, not just the main one (see *Bungay v. Canada (Attorney General)*, 2011 FCA 47). The Applicant submits that the General Division erred because it failed to consider all of the ailments he complained of. The decision lists the Applicant's medical conditions, including migraine headaches, low back pain, dizziness, chronic pain, poor vision and sleep apnea. It does not, however, analyze all of these conditions or consider their impact, alone or cumulatively, on the Applicant's capacity regularly to pursue any substantially gainful occupation. The decision summarized the evidence regarding the Applicant's vision, ongoing pain, instability and falling, and sleep issues. It analyzed the evidence regarding pain, vision loss, and cognitive ability. It appears not to have considered the Applicant's other medical conditions individually or cumulatively. This points to an error in law, and this ground of appeal also has a reasonable chance of success on appeal.

## **CONCLUSION**

[10] The Application is granted for the reasons set out above.

[11] The parties are asked to provide a transcription of the General Division hearing or to refer to the time stamp on the hearing recording to support any arguments based on what occurred at that hearing. The parties are not restricted to the grounds considered in this decision at the hearing of the appeal.

[12] The 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

## **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.