



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. O. v. Minister of Employment and Social Development*, 2017 SSTADIS 589

Tribunal File Number: AD-17-60

BETWEEN:

**S. O.**

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: Shu-Tai Cheng

Date of Decision: November 1, 2017

## REASONS AND DECISION

### DECISION

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

### OVERVIEW

[2] The Applicant, S. O., seeks a disability pension under the *Canada Pension Plan* (CPP). She claims that chronic pain and depression 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 appealed the Respondent's denial of a CPP disability pension to the General Division of the Social Security Tribunal of Canada. The General Division found that the Applicant had work capacity, that she lacked motivation in her efforts at obtaining and maintain employment and that she did not follow medical recommendations. Therefore, she did not establish that she had a severe disability as required to qualify for a disability pension.

[5] The Applicant seeks leave to appeal the General Division decision on the basis that it made serious errors by concluding that the Applicant lacked motivation to obtain and maintain work and that the oral evidence of the Applicant's sister was credible but "not useful."

[6] I find that this appeal has a reasonable chance of success, because the General Division found that the testimony of the Applicant's sister was "not useful" because she said "I can't say a defining time for sure."

### ISSUE

[7] Is there an argument that the General Division erred in law or made a serious error in its finding of facts by basing its decision on the conclusion that the oral evidence of the Applicant's sister was "not useful" because she could not state "the defining time for sure"?

## ANALYSIS

[8] 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.<sup>1</sup>

[9] 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?<sup>2</sup>

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success<sup>3</sup> based on a reviewable error. 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 had made in a perverse or capricious manner or without regard for the material before it.<sup>4</sup>

[11] The Applicant submits that the General Division made all three kinds of reviewable errors, and she has provided arguments on each one.

[12] Although the Applicant has submitted numerous grounds of appeal, the Appeal Division need not address all the grounds of appeal raised. Where individual grounds of appeal are interrelated, it may be impracticable to parse the grounds. One arguable ground of appeal may suffice to justify granting leave to appeal.<sup>5</sup> Therefore, I will address one possible error that warrants further review and not every alleged error.

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

<sup>2</sup> *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.

<sup>3</sup> DESD Act at subsection 58(1).

<sup>4</sup> DESD Act at subsection 58(2).

<sup>5</sup> *Mette v. Canada (Attorney General)*, 2016 FCA 276.

## **Is There an Argument That the General Division Erred by Discounting the Oral Evidence of the Applicant's Sister?**

[13] I find that there is an arguable case on the ground of appeal that the General Division may have made serious errors in its findings of fact, specifically as it relates to discounting oral evidence on the basis that the witness did not define a period of time exactly.

[14] The Applicant's sister (witness) testified about the Applicant's return to work between 2010 and 2012. She stated that the Applicant was in pain, that she could not do the work and that she was unable to keep working due to her health. She also indicated that the Applicant's hours had been reduced towards the end of that work period. The Applicant worked until October 2012.

[15] While the witness was describing the Applicant's difficulties, the General Division member asked her what period of time she was describing.<sup>6</sup> The witness answered "2012" and then went on to say that the Applicant's need for help from family members was "pretty constant," "I can't say a defining time for sure"<sup>7</sup> and "this is the way it has been for years."

[16] The member then asked the witness to elaborate on "I can't say a defining time for sure." The member explained that the period around December 2012 was "very important," and he wanted the witness to be "very specific" about the time frame. He stated that he was very interested in what the witness could tell him specifically about November and December 2012.<sup>8</sup> The witness stated that those two months "are like the way it always is" and "it is no different now than it was then."<sup>9</sup> The witness appears to have testified in a chronological fashion.

[17] The General Division member found this witness and her evidence to be credible.<sup>10</sup> However, he also found her evidence "not helpful" because the witness could not state "the defining time period for sure" and because her evidence would not be relevant if the difficulties described were after the MQP. I am concerned about these conclusions.

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<sup>6</sup> Audio recording of the General Division hearing, part 2, at approximate time stamp 4:15.

<sup>7</sup> *Ibid.* at 4:50 approx.

<sup>8</sup> *Ibid.* at 7:10 approx.

<sup>9</sup> *Ibid.* at 7:22 approx.

<sup>10</sup> General Division decision at paragraph 39.

[18] The General Division appears to have discounted this witness's evidence in its entirety, because she could not tell him exactly when she had observed the difficulties she was describing. However, the witness did turn her mind to the months of November and December 2012, and her testimony was given mostly chronologically. Was this witness's testimony treated in a perverse or capricious manner or without regard for the material before the General Division?

[19] It is the General Division's role to review and weigh the evidence. In so doing, however, it must act fairly and it must explain the reasons for according weight to specific relevant evidence in an adequate manner. This is particularly so if relevant evidence is given little or no weight. A failure to do so presents a risk that its decision will be marred by an error of law or that it will be qualified as capricious.

[20] Whether the General Division reviewed the evidence in a fair manner and provided adequate reasons when it found that the testimony of the Applicant's sister was "not useful" warrants further review.

[21] I am satisfied that the appeal has a reasonable chance of success on the basis of a possible error of law or an erroneous finding of fact that the General Division made in a perverse or capricious manner or without regard for the material before it.

## **CONCLUSION**

[22] The Application is granted pursuant to paragraphs 58(1)(b) and (c) of the DESD Act.

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

Shu-Tai Cheng  
Member, Appeal Division