



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. Q. v. Minister of Employment and Social Development*, 2017 SSTADIS 604

Tribunal File Number: AD-17-605

BETWEEN:

S. Q.

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: November 2, 2017

REASONS AND DECISION

INTRODUCTION

[1] On July 20, 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 with the Tribunal's Appeal Division on September 1, 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 that the appeal has no reasonable chance of success.

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

[6] The General Division decision sets out the Applicant's medical conditions, including knee, hip and shoulder injuries, their treatment and future treatment recommendations. It also

summarizes her work history, including a number of jobs after the minimum qualifying period (the date by which the Applicant must be found to be disabled in order to receive the disability pension). I have also reviewed the written record in this matter and am satisfied that the General Division did not overlook or misconstrue any important evidence.

[7] The Applicant submits that leave to appeal should be granted because she wished to present her case herself and was unhappy with the representation she had at the General Division hearing. She indicates that information was not presented at the hearing and that her representative did not ask her all the questions he should have. This argument does not point to any error made by the Tribunal. It is for each party to present their case, both in writing and orally at the hearing. It is not for the Tribunal member to ensure that all of the possible evidence that could be relevant is presented. This is not a ground of appeal under the DESD Act.

[8] The Applicant also argues that the medical evidence was not taken “deep enough into consideration.” It is for the General Division to receive the evidence from the parties, weigh it and make a decision. With this argument, the Applicant essentially asks this Tribunal to re-evaluate and reweigh the evidence that was put before the General Division. This is the province of the trier of fact, the General Division in this case. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the tribunal that made the findings of fact: *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, I find that this argument does not raise a ground of appeal that has a reasonable chance of success.

[9] Next, the Applicant contends that the General Division decided the appeal on the basis of whether she was disabled and not whether she worked while disabled. This is what the General Division is required to do. This Tribunal is bound by the legislation, and has no authority to grant a disability pension to a claimant who does not meet the test for disability under the *Canada Pension Plan (CPP)*. The CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if they are incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. In this case, the General Division decided that the Applicant was not disabled because she was able to work in a number of substantially gainful occupations after the minimum

qualifying period. This argument discloses no ground of appeal that has a reasonable chance of success on appeal.

[10] Finally, the Applicant argues that she did not want to “go back to 1997,” but to 2004, when she stated she could no longer work. Again, this Tribunal is bound by the CPP. It states that to succeed, a claimant must be found to be disabled on or before the minimum qualifying period. This date is calculated based on when and for how long a claimant made contributions to the CPP. In this case, the General Division correctly stated that the Applicant’s minimum qualifying period ended on December 31, 1997. That is why it considered her condition at that time. There was also a possibility that the Applicant in this case could be eligible for the disability pension if she became disabled in 2000 before the end of January. The General Division concluded that there was no evidence to find that the Applicant became disabled during this time. The Applicant has not suggested that the General Division made any error in this regard. This is not a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[11] I have great sympathy for the Applicant and her circumstances. This application for leave to appeal must be refused because she has not presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division