



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 631

Tribunal File Number: AD-17-117

BETWEEN:

J. S.

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 10, 2017

REASONS AND DECISION

INTRODUCTION

[1] On November 23, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was not payable. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on February 7, 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 under the DESD Act are set out in subsection 58(1) of the DESD Act. They are that the General Division failed to observe the principles of natural justice, made an error of 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. Subsection 58(2) states that leave to appeal is to be refused if the appeal has no reasonable chance of success (see Appendix).

[4] The Applicant submits that the General Division based its decision on an erroneous finding of fact made contrary to section 58 of the DESD Act when it found that none of the medical experts stated that the Applicant's dyslexia was a barrier to light duties. The Applicant referenced Dr. Matthews's notes, which reported that the Applicant could not do office work. On December 7, 2011, Dr. Matthews wrote that the Applicant did not feel that he was ready to return to work or that he could do office work because of his dyslexia. This is not Dr. Matthews's opinion, but what the Applicant reported to him.

[5] The General Division considered the impact of the Applicant's dyslexia in paragraph 65 of the decision. It states that the dyslexia did not prevent him from obtaining licences as a plumber and gas fitter. I am not persuaded that this ground of appeal points to an erroneous

finding of fact made perversely, capriciously or without regard for all of the material that was before the General Division.

[6] The Applicant also argues that the General Division failed to consider his low educational achievement together with his medical limitations. The decision sets out that the Applicant finished Grade 10, and that he obtained two trade licences. It also considered his age, the impact of his medical condition, and the side effects of the medication taken for this. This ground of appeal does not point to any erroneous finding of fact by the General Division.

[7] I have also reviewed the written record and am satisfied that the General Division did not misconstrue or overlook any important evidence. There is no indication that the General Division failed to observe the principles of natural justice or made an error in law.

[8] Finally, the Applicant included two additional documents to support his claim: a disability tax credit certificate and an employee's supplementary statement disability information questionnaire for his long-term disability insurer. However, new evidence generally is not permitted on an appeal under the DESD Act: *Canada (Attorney General) v. O'Keefe*, 2016 FC 503. The provision of these documents is not a ground of appeal under the DESD Act.

CONCLUSION

[9] The Application is refused as the Applicant 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

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