



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 672

Tribunal File Number: AD-17-354

BETWEEN:

**A. B.**

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 21, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant applied for a Canada Pension Plan disability pension and claimed that he was disabled by mental illness and physical limitations. The Respondent denied the application initially and upon reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On February 27, 2017, the Tribunal's General Division determined that the Applicant was not disabled under the *Canada Pension Plan* (CPP). The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on April 27, 2017.

[2] The Application did not clearly set out grounds of appeal under the *Department of Employment and Social Development Act* (DESD Act) so the Tribunal wrote to the Applicant and requested that he specify grounds of appeal. The Applicant responded within the time provided to do so.

### ANALYSIS

[3] 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.

[4] The only grounds of appeal available under the DESD Act are set out in subsection 58(1). 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.

[5] The Applicant claims that the General Division failed to observe the principles of natural justice, which is a ground of appeal set out in subsection 58(1) of the DESD Act. The principles of natural justice are concerned with ensuring that a claimant has an opportunity to present his case, know and answer the case against him, and have a decision made by an

impartial decision-maker based on the law and the facts. In this case I am not satisfied that the Applicant has pointed to any failure to observe these principles for the following reasons.

[6] First, the Applicant submits that the General Division did not acknowledge that he had been hospitalized for approximately one month in 2016 for his mental illness. With the Application he included medical records to substantiate this hospitalization. He also acknowledged, however, that these documents had not been filed with the Tribunal's General Division. The General Division cannot be faulted for not considering evidence that was not before it.

[7] In addition, subsection 58(1) of the DESD Act sets out the only grounds of appeal that can be considered. The presentation of new evidence is not one of the permissible grounds of appeal (*Canada (Attorney General) v. O'keefe*, 2016 FC 503). The presentation of this evidence does not point to any error made by the General Division and leave to appeal cannot be granted on this basis.

[8] The Applicant also contends that the General Division based its decision on the assumption that he could not work because he had been incarcerated when in fact he was unable to work because of mental illness. The General Division decision refers to the Applicant having been incarcerated, and his concern that he would lose his real estate licence because of his criminal record (paragraph 47). The decision also summarized and considered the evidence regarding the Applicant's bipolar disorder, post-traumatic stress disorder, and various pain complaints. The General Division considered all of the evidence regarding these conditions and concluded that there was insufficient evidence to find that the Applicant was disabled as a result of these conditions. This ground of appeal also does not point to any error by the General Division or any failure to observe the principles of natural justice.

[9] The Applicant also repeated some of the evidence that was before the General Division. This does not point to any error made by the General Division and is not a ground of appeal under section 58 of the DESD Act.

[10] I have reviewed the General Division decision and the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence. I am also satisfied that it committed no error of law and that it observed the principles of natural justice.

## **CONCLUSION**

[11] The Application is refused as the Applicant has not presented a ground of appeal under subsection 58(1) of the DESD Act that has a reasonable chance of success on appeal.

Valerie Hazlett Parker  
Member, Appeal Division