



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. Q. v. Minister of Employment and Social Development*, 2017 SSTADIS 726

Tribunal File Number: AD-17-273

BETWEEN:

M. 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: December 12, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant completed high school and obtained a post-secondary degree. She has experience teaching, as well as running a home daycare and another home-based business. She applied for a Canada Pension Plan disability pension and claimed that she is disabled as a result of back pain. She also suffers from plantar fasciitis, obesity, and some nerve limitations in her arms. The Respondent denied her application initially and on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On December 30, 2016, the Tribunal's General Division decided that the Applicant was not disabled under the *Canada Pension Plan*. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on March 28, 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). They are that the General Division failed to observe a principle 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 for 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.

[4] The Applicant argues that the General Division based its decision on erroneous findings of fact under subsection 58(1) of the DESD Act. I must decide whether any such ground of appeal has a reasonable chance of success on appeal.

[5] The Applicant disagrees with a number of statements in the General Division decision. For the reasons below, I am not satisfied that these statements point to a ground of appeal that has a reasonable chance of success on appeal:

- a) While the decision states that the Applicant was 44 years of age at the minimum qualifying period, she clarified that she was 45 at the time of the hearing. This statement is not erroneous.
- b) The Applicant also clarifies that the reason she did not accept children for daycare was not because it took time away from caring for her own children, but because she had difficulty with the physical demands required to care for them. Paragraph 11 of the decision refers to the Applicant's testimony that having children for daycare does impact her time with her own children; however, subsequent paragraphs clearly indicate that the Applicant is limited by back pain and her other conditions. The General Division placed greater weight on the Applicant's testimony that she would continue to run the daycare business if there were a demand for care for school-age children. The decision was not based on the fact that providing care for children would take away from the Applicant's time with her own children. Therefore, this statement does not point to any erroneous finding of fact that the decision was based on.
- c) The Applicant argues that her work as a poll clerk demonstrates that she would work if she could. Paragraph 13 of the General Division decision summarizes her evidence in this regard. The Applicant's restatement of this evidence does not point to any erroneous finding of fact.
- d) Regarding paragraph 16 of the decision, the Applicant states that she was diagnosed with depression and a condition similar to post-traumatic stress disorder after the hearing. This does not point to any ground of appeal under the DESD Act. The presentation of new evidence is not a ground of appeal, and new evidence is generally not permitted on an appeal under the DESD Act: *Canada (Attorney General) v. O'Keefe*, 2016 FC 503.
- e) The Applicant states that she has been referred to a pain clinic but has not yet attended, and that she sees Dr. Bulanski every three to four months for pain management. Again, this points to new evidence, and not a ground of appeal.
- f) The Applicant states that she does not believe that the Tribunal member listened to her evidence regarding her daily routine, but does not point to any error made in the summary

of it in the decision. Hence, this statement does not indicate any ground of appeal under the DESD Act.

- g) The Applicant confirms that, since seeing Dr. Pandey, she has not had issues with cholesterol or high blood pressure, and that her weight has not been an issue. She also denies that she ever weighed 295 pounds. While it may have been an error to report that the Applicant weighed this amount, the decision was not based on this fact. Similarly, the decision was not based on findings of fact with respect to her following a particular diet, or with respect to cholesterol or high blood pressure issues. Therefore, these are not grounds of appeal that have a reasonable chance of success on appeal.
- h) The Applicant also takes issue with Dr. Giles's report and the treatment recommendations she made. The Applicant's disagreement with this does not point to a ground of appeal.
- i) The Applicant contends that she could not work at a sedentary job because she cannot sit for long periods. This restatement of the Applicant's evidence is not a ground of appeal.

[6] I have read the General Division decision and the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence, did not make any error of law and did not fail to observe a principle of natural justice.

CONCLUSION

[7] The Application is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division