



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 724

Tribunal File Number: AD-17-315

BETWEEN:

D. P.

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 11, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant was born and educated in Vietnam. He moved to Canada in 1990 and worked in physically demanding jobs until April 2005. He attended an educational upgrading program through the Ontario Workplace Safety and Insurance Board in 2013 and 2014. He has limited English skills. The Applicant applied for a Canada Pension Plan disability pension and claimed that he was disabled and unable to work after April 2005 because he suffered from neck pain and right arm symptoms, hand-arm vibration syndrome, Raynaud's syndrome and thoracic outlet syndrome. The Respondent denied his application for a disability pension initially and on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On January 18, 2017, the Tribunal's General Division dismissed his appeal, deciding 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 April 12, 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] I must decide whether the Applicant has presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

[5] The Applicant argues that the General Division erred in law as it did not apply the legal principle set out in *Villani v. Canada (Attorney General)*, 2001 FCA 248, to the facts before it. This decision sets out that when deciding whether a person's disability is severe, the Tribunal must keep in mind factors such as the claimant's age, level of education, language proficiency, and past work and life experience. The General Division decision states this principle in paragraph 38 of the decision. Paragraph 55 of the decision states:

The Appellant was only thirty-five years old at his MQP. The Tribunal acknowledges the Appellant is not fully proficient in the English language. The Tribunal notes, however, the Appellant worked for three different employers for many years in an English speaking environment without difficulty, and further improved his English language skills following completion of a retraining program subsequent to his MQP. The Tribunal, while acknowledging the Appellant's limited education, noted the Appellant acquired the skills to work as a mould finisher on the job without difficulty in an English work environment, and being only thirty-five years at his MQP, had, and still has, the opportunity to upgrade his education to obtain employment not precluded by his fundamental limitations.

From this, it is clear that the General Division considered the Applicant's personal characteristics, including his limited English skills, his work history in physically demanding jobs, and his age. I am satisfied that the General Division also considered the Applicant's limitations from his physical ailments in this context, since the decision summarized the evidence that was presented and analyzed it. In paragraphs 39 to 44 of the decision, the General Division considered each of the Applicant's conditions and, based on the evidence, decided that they were not "severe," as that term is defined in the *Canada Pension Plan*. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[6] 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. There is also no indication that the General Division failed to observe a principle of natural justice.

CONCLUSION

[7] The Application is refused because 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