



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. C. v. Minister of Employment and Social Development*, 2017 SSTADIS 775

Tribunal File Number: AD-17-716

BETWEEN:

**L. C.**

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: December 29, 2017

## **REASONS AND DECISION**

### **DECISION**

[1] Leave to appeal is granted.

### **INTRODUCTION**

[2] The Applicant completed high school and college. She worked and contributed to the Canada Pension Plan. In May 2014 she applied for a Canada Pension Plan disability pension and claimed that she was disabled by interstitial cystitis, hiatal and epigastric hernias, depression, agoraphobia and anxiety. The Respondent refused her application. She appealed this decision to the Social Security Tribunal of Canada (Tribunal). On July 13, 2017, the Tribunal's General Division dismissed her appeal, finding that she was not disabled under the legislation. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on October 16, 2017.

### **ANALYSIS**

[3] 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.

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

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

[6] The Applicant contends that the General Division erred in law by misapplying the legal principle set out in *Canada (Attorney General) v. Zakaria*, 2011 FC 136 and imposing a

requirement that the Applicant's medical treatment not be interrupted in order to qualify for the disability pension. The *Zakaria* decision states that a disability pension claimant must establish not only that they were disabled, but also that the disability existed prior to the expiry of the minimum qualifying period (the date by which a claimant must be found to be disabled in order to be eligible to receive the pension) as well as continuously thereafter. The Applicant argues that there is no requirement that treatment be continuous, just the disability. In this case, the General Division seems to conclude, in part, that because there were interruptions in treatment of the Applicant's various medical conditions, she did not establish that she was disabled. This argument therefore points to an error in law and leave to appeal should be granted.

[7] The Applicant also suggests that the General Division may have breached her rights under the *Canadian Charter of Rights and Freedoms*, or Charter values. I need not decide at this juncture whether these arguments have a reasonable chance of success as the Court in *Mette v. Canada (Attorney General)*, 2016 FCA 276, indicated that it is not necessary for the Appeal Division to address all the grounds of appeal an applicant raises. If the Applicant wishes to pursue this appeal on the basis that her rights under the *Canadian Charter of Rights and Freedoms* were breached, she is reminded of the requirements to do so under the *Social Security Tribunal Regulations* and related legislation. She is invited to clarify in her written submissions whether she wishes to pursue this claim.

[8] The parties are also invited to address the form of hearing they would prefer for the hearing of the appeal, along with any relevant legal issues, in their submissions. The parties are not restricted to the ground of appeal considered in this decision.

[9] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker  
Member, Appeal Division