



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. C. v. Minister of Employment and Social Development*, 2018 SST 20

Tribunal File Number: AD-17-622

BETWEEN:

B. C.

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: January 8, 2018

REASONS AND DECISION

DECISION

[1] The application for leave to appeal is refused.

INTRODUCTION

[2] The Applicant worked and contributed to the Canada Pension Plan for a number of years. She last worked sorting and delivering mail in a rural area until 2013. The Applicant applied for a Canada Pension Plan disability pension and claimed that she was disabled by a shoulder injury. She has also been diagnosed with liver cirrhosis, GERD, high blood pressure, and diabetes. The Respondent refused the application and the Applicant appealed this decision to the Social Security Tribunal of Canada (Tribunal). On July 13, 2017, the Tribunal's General Division dismissed her appeal. The Applicant requested leave to appeal this decision to the Tribunal's Appeal Division on September 14, 2017, which was within the time permitted to do so.

[3] The Applicant did not disclose grounds of appeal that the Tribunal could consider in her request for leave to appeal. The Tribunal wrote to her and requested that she provide this information. She responded by letter.

ANALYSIS

[4] 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.

[5] 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.

[6] Consequently, I must decide whether the Applicant has presented a ground of appeal that falls under subsection 58(1) of the DESD Act and that may have a reasonable chance of success on appeal.

[7] In the application for leave to appeal, the Applicant wrote that the General Division misunderstood the circumstances surrounding her care for her mother. She clarified that she did not provide physical care for her mother, as home care services came to the home multiple times each day to do so, and her teenage children also provided care. The General Division decision states that the Applicant and her immediate family moved into her mother's home to provide care for her. The Applicant gave her medicine and cooked meals, home care services attended to her mother for 10 hours each week, and her husband bought groceries and did other tasks. The Applicant's doctor also wrote that before home care services became involved, the Applicant was overworked caring for her mother.

[8] I am not satisfied that the General Division decision was based on any error regarding this evidence. The decision is consistent with the Applicant's statements in the leave to appeal documents. Further, the General Division decision was not based solely on the Applicant's ability to care for her mother, but also on her diagnoses, treatment, and functional abilities evaluation. Therefore, this argument does not disclose a ground of appeal under subsection 58(1) of the DESD Act that may have a reasonable chance of success on appeal.

[9] The Applicant also wrote that it is difficult to obtain work in the area where she lives. This information was also before the General Division. Paragraph 30 of the decision correctly states that socio-economic factors such as difficulty finding work are not relevant considerations in a claim for a Canada Pension Plan disability pension. The repetition of this fact does not point to any ground of appeal under subsection 58(1) of the DESD Act.

[10] The Applicant also wrote in correspondence to the Tribunal dated September 2017 and October 2017 that she continues to suffer with pain every day, and has difficulty walking because her knees buckle. While these circumstances are unfortunate, the presentation of this evidence does not point to any error made by the General Division. Leave to appeal cannot be granted on this basis.

[11] Finally, the Applicant included a document from the workers' compensation program in Nova Scotia in support of her application for leave to appeal. An appeal to the Appeal Division is not ordinarily an occasion on which new evidence can be introduced, given the constraints of subsection 58(1) of the DESD Act, which do not give the Appeal Division authority to consider new evidence or entertain arguments on the merits of an appellant's disability claim (*Belo-Alves v. Canada (Attorney General)*, 2014 FC 1100). The presentation of this evidence is therefore not a ground of appeal under the DESD Act.

[12] I have reviewed the documents filed in support of the Applicant's request for leave to appeal, 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 it made an error of law or that it failed to observe a principle of natural justice.

[13] The application for leave to appeal must therefore be refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division