



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v. Minister of Employment and Social Development*, 2018 SST 24

Tribunal File Number: AD-17-259

BETWEEN:

S. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: January 10, 2018

DECISION AND REASONS

DECISION

Leave to appeal is refused.

OVERVIEW

[1] The Applicant, S. S., who is now 42 years old, worked in a distribution centre for 15 years. He injured his neck at work and underwent corrective surgery in October 2013. He has not worked since.

[2] In April 2015, the Respondent, the Minister of Employment and Social Development (Minister), refused the Applicant's application for a disability pension under the *Canada Pension Plan* (CPP). The Minister acknowledged that Mr. S. S. suffered from limitations in the range of motion of his neck but found him capable of some kind of work during the minimum qualifying period (MQP), which ended on December 31, 2015.

[3] Mr. S. S. appealed the Minister's refusal to the General Division of the Social Security Tribunal of Canada (Tribunal). Following a hearing by videoconference, the General Division concluded that Mr. S. S. had not demonstrated a severe disability, nor had he attempted light or sedentary work or investigated retraining.

[4] In March 2017, Mr. S. S. submitted an application requesting leave to appeal from the Tribunal's Appeal Division, alleging that the General Division had failed to consider his testimony about the significant impact of his medical conditions on his employability. Shortly thereafter, Mr. S. S. also filed an application to rescind or amend the General Division's decision on the basis of new facts. The present appeal was placed in abeyance pending disposition of the second application.

[5] On September 1, 2017, the General Division dismissed the application to rescind or amend. I have now reviewed the General Division's decision against the underlying record and have concluded that Mr. S. S. has not advanced any grounds that would have a reasonable chance of success on appeal.

ISSUES

[6] According to section 58 of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division first grants leave to appeal,¹ but the Appeal Division must first be satisfied that the appeal has a reasonable chance of success.² The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.³

[7] I must determine whether Mr. S. S. has an arguable case that the General Division failed to consider his testimony about the impact of his medical conditions on his employability.

ANALYSIS

[8] It is settled law that an administrative tribunal charged with fact finding is presumed to have considered all the evidence before it and need not discuss each and every element of a party's submissions.⁴ That said, I have reviewed the General Division's decision and have found no indication that it ignored, or gave inadequate consideration to, any significant item of evidence.

[9] In essence, Mr. S. S. is alleging that the General Division dismissed his appeal despite medical evidence indicating that his condition was "severe," according to the CPP criteria. In my view, however, the General Division's decision contains what appears to be a thorough summary of the evidence, including Mr. S. S.' testimony and medical file, followed by a detailed analysis of his claimed medical conditions—principally degenerative disc disease in his cervical spine—and whether they affected his capacity to regularly pursue substantially gainful employment during the MQP. In doing so, it took into account his background—

¹ DESDA at subsections 56(1) and 58(3).

² *Ibid.* at subsection 58(1).

³ *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

⁴ *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

including his age, education and work experience—but found that it was not a significant impediment to his ability to retrain or perform alternate work.

[10] Mr. S. S.' submissions on this ground amount to a recapitulation of the case that he presented to the General Division, but he did not identify how, in coming to its decision, the General Division failed to observe a principle of natural justice, committed an error in law or made an erroneous finding of fact. In the absence of a specific allegation of error, I find this claimed ground of appeal to be so broad as to amount to a request to retry the entire claim. If Mr. S. S. is asking me to reassess the evidence and substitute my judgment for the General Division's, I am unable to do this. My authority as an Appeal Division member permits me to determine only whether any of an applicant's reasons for appealing fall within the specified grounds of subsection 58(1) and whether any of them have a reasonable chance of success.

CONCLUSION

[11] As Mr. S. S. has not identified any grounds of appeal under the DESDA that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.



Member, Appeal Division