



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. W. v. Minister of Employment and Social Development*, 2018 SST 25

Tribunal File Number: AD-17-476

BETWEEN:

**D. W.**

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: January 10, 2018

## REASONS AND DECISION

### DECISION

[1] Leave to appeal is refused.

### INTRODUCTION

[2] The Applicant completed some high school education and obtained training in cosmetology. She worked for a number of years and contributed to the Canada Pension Plan. She stopped working for a period of time in 2013 due to her poor health. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by an acquired brain injury secondary to left anterior cerebral artery aneurysm rupture and stroke/subarachnoid hemorrhage, which she had in 2013. The Respondent refused the application and the Applicant appealed this decision to the Social Security Tribunal of Canada (Tribunal). On June 5, 2017, the Tribunal's General Division dismissed her appeal and decided that she was not disabled under the *Canada Pension Plan*. The Applicant filed an application for leave to appeal (Application) to the Tribunal's Appeal Division on June 27, 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 the following:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[5] Subsection 58(2) of the DESD Act provides that leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[6] For the reasons set out below, I am not satisfied that the Applicant has presented a ground of appeal under subsection 58(1) of the DESD Act that may have a reasonable chance of success on appeal.

[7] In the Application and in other correspondence to the Tribunal, the Applicant included a summary of her limitations, including difficulty with word finding, right-side weakness, and difficulty dealing with the public. She also argues that her attempts to return to work after the stroke and aneurism in 2013 failed. I have great sympathy for the Applicant and her circumstances. However, all of this information was before the General Division when it made its decision. An appeal to the Appeal Division is not a rehearing of the applicant's claim. The repetition of this evidence is not a ground of appeal under the DESD Act.

[8] The Applicant also argues that she had been told by Service Canada that her hearing would be held in person, but it was held by teleconference, which was a breach of natural justice. Hearings before the General Division may be held by written question and answer, teleconference, videoconference, or in-person hearing. It is for the General Division member to determine what form the hearing should take. The Applicant did not suggest that the General Division made the decision to hold the hearing by teleconference improperly. There is no indication that the General Division exercised this discretion improperly or injudiciously.

[9] In addition, the principles of natural justice are concerned with ensuring that parties to a legal proceeding know the legal case they have to answer, have the opportunity to present their case, and have the decision made by an independent decision maker based on the law and the facts. The Applicant does not suggest, and the written record does not indicate, that any of these principles were not observed. The Applicant did not refer to any evidence that she was unable to present, and she did not argue that she failed to understand the appeal process or that she could not fully participate in it. Therefore, this argument is not a ground of appeal that may have a reasonable chance of success on appeal.

[10] Finally, the Applicant wrote in the Application that she thought that Service Canada would contact her neurosurgeon to obtain further information, since this doctor would speak with it and advocate for her. This does not point to any error made by the Tribunal. It is for the parties to a legal proceeding to present all the evidence that they think is relevant to their case. The Tribunal must remain impartial and therefore cannot seek out evidence on behalf of any party. This argument does not point to any error made by the General Division; it is also not a ground of appeal under the DESD Act.

[11] I have reviewed the Application and the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence. I am also satisfied that it made no error in law and that it observed the principles of natural justice. The Applicant has not presented a ground of appeal under the DESD Act that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker  
Member, Appeal Division