



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. D. v. Minister of Employment and Social Development*, 2018 SST 53

Tribunal File Number: AD-17-506

BETWEEN:

N. D.

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 19, 2018

REASONS AND DECISION

DECISION

[1] Leave to appeal is refused.

INTRODUCTION

[2] The Applicant obtained a college diploma as a health care aide. She worked in this field for a number of years, with her last job as a domestic engineer from 2013 to 2014. The Applicant had heart conditions and underwent surgery in 2014. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by having had open heart surgery. The Respondent refused the application and the Applicant appealed that decision to the Social Security Tribunal of Canada. The Tribunal's General Division dismissed the appeal. The Applicant filed an application for leave to appeal that decision to the Tribunal's Appeal Division.

ANALYSIS

[3] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operations. 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 to the Appeal Division 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] The Applicant argues that the General Division based its decision on the facts but did not fully understand her circumstances. In addition, because she lives in Ontario and could apply for provincial disability benefits, her appeal was dismissed. I must decide whether these arguments are grounds of appeal that fall under subsection 58(1) of the DESD Act and that may have a reasonable chance of success on appeal.

[6] The Canada Pension Plan is a contributory disability program. A claimant must work and contribute to the Plan for a set amount of time before they can be eligible to receive a disability pension. Based on when and how much a claimant contributes to the Plan, their minimum qualifying period is calculated. This is the date by which the claimant must prove that she was disabled in order to receive the disability pension. In this case, based on the Applicant's contributions, the minimum qualifying period ended on December 31, 2005. Therefore, in order for the Applicant to receive a Canada Pension Plan disability pension, she must prove that she was disabled by this date.

[7] The General Division decision sets out that the minimum qualifying period ended on December 31, 2005. The medical evidence, as well as the Applicant's testimony and written evidence (her disability pension application, questionnaire, etc.), stated that she was healthy in 2005, and did not suffer any significant health problems until 2014 when she ultimately underwent open heart surgery and began a long recovery period.

[8] The Applicant acknowledges that the decision was based on the facts. I have reviewed the written record and am satisfied that the General Division did not overlook or misconstrue any important facts. The General Division understood the Applicant's plight. The Applicant's argument that the General Division did not understand her circumstances does not have a reasonable chance of success on appeal.

[9] In addition, nothing in the General Division decision suggests that the Applicant's residence in Ontario or her potential ability to apply for a provincial benefit influenced the decision-maker in any way. The reasoning in the decision is clear. The decision was based on its consideration of all of the medical evidence, including doctor Quigg's report dated July 25, 2014, that he began to treat her heart issues in 2014. The Applicant also testified that this was when her significant health problems began. The decision clearly states that her appeal was

dismissed because she was not disabled before the end of the minimum qualifying period in 2005. This reasoning is intelligible, logical and based on the law and the facts.

[10] Leave to appeal must be refused because the Applicant has not 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.

Valerie Hazlett Parker
Member, Appeal Division