



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. M. v. Minister of Employment and Social Development*, 2018 SST 85

Tribunal File Number: AD-17-946

BETWEEN:

B. M.

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 29, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] B. M., the Applicant, worked mostly as a waitress. She stopped working after having a second “stroke-like incident” in 2006 that left her with speech and mobility issues for a time. Subsequently, the Applicant was treated for breast cancer and had other diagnoses. In 2015, she was diagnosed with Parkinson’s disease. The Applicant applied for a Canada Pension Plan disability pension in 2015 and claimed that she was disabled by confusion, fatigue, and dizziness. The Minister of Employment and Social Development refused the application and she appealed this decision to this Tribunal. The Tribunal’s General Division dismissed her appeal. She now requests leave to appeal to the Tribunal’s Appeal Division. This request is refused because the appeal has no reasonable chance of success on the basis that the General Division based its decision on erroneous findings of fact.

ISSUES

[3] I must decide whether the Applicant’s ground of appeal, that the General Division based its decision on erroneous findings of fact, may have a reasonable chance of success. The Applicant alleges that the erroneous findings of fact are:

- a) that there was no evidence that the Applicant had a cognitive impairment; and
- b) that the General Division speculated about further treatment options.

ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal’s operations. It sets out the only grounds of appeal that can be considered, 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.¹ In addition, leave to appeal must be refused if the appeal has no reasonable chance of success.² The Applicant's request for leave to appeal must be considered in this context.

Issue 1: The General Division Did Not Err Regarding the Applicant's Cognitive Impairment

[5] The Applicant claimed that she was disabled by confusion, fatigue, and dizziness. The General Division decision contains a summary of the oral and written evidence that was presented, including numerous medical reports. The Applicant argues that the General Division erred because it did not consider that her fatigue, low mood, low motivation, and other symptoms are well known to be associated with cognitive deficits, and it therefore erred when it concluded that she had no cognitive deficits.

[6] The General Division carefully considered each of the symptoms presented by the Applicant in her testimony, her husband's testimony, and the written evidence.³ The decision specifically states that the Applicant's assertion that she had cognitive deficits is not supported by the written evidence⁴ and explains how it reached this decision. Consequently, the Applicant's argument that the General Division erroneously found that she did not suffer from cognitive deficits is really a request for the Appeal Division to reweigh the evidence to reach a different conclusion. The Appeal Division is not to reweigh the evidence,⁵ as this is the mandate of the General Division. This argument therefore does not point to a ground of appeal that may have a reasonable chance of success on appeal.

[7] The Applicant also asserts that the General Division erred when it referred to the Applicant having "severe strokes"⁶ when she in fact had "several strokes." I am not satisfied that this points to an erroneous finding of fact under the DESD Act. The decision was not based on a finding of the severity or number of strokes or stroke-like incidents that the Applicant had.

¹ Subsection 58(1) of the DESD Act.

² Subsection 58(2) of the DESD Act.

³ See paragraphs 59 and 60 of the General Division decision.

⁴ Paragraph 60 of the General Division decision.

⁵ *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

⁶ Paragraph 60 of the General Division decision.

Issue 2: The General Division Did Not Speculate About Treatment Options

[8] The Applicant argues, in addition, that the General Division based its decision on an erroneous finding of fact because it speculated about possible medical treatment options. Paragraph 58 of the decision discusses a number of the Applicant's reported symptoms. It states that the Applicant's doctor did not refer her to mental health services for stress-related issues. Similarly, it states that the doctor did not refer the Applicant for a sleep study for her fatigue. These findings of fact are not in dispute. They were not made in error. These statements do not speculate that the Applicant should undergo these treatments, or whether they would provide any benefit to her. This argument does not point to any erroneous finding of fact under the DESD Act upon which the decision was based. This is not a ground of appeal that may have a reasonable chance of success on appeal.

[9] I have also reviewed the written record and am satisfied that the General Division did not overlook or misconstrue any important evidence. Further, there is no indication that the General Division erred in law or failed to observe the principles of natural justice.

CONCLUSION

[10] The application for leave to appeal is refused because the Applicant has not presented a ground of appeal that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division