



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Y. B. v. Minister of Employment and Social Development*, 2018 SST 128

Tribunal File Number: AD-17-955

BETWEEN:

**Y. B.**

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: February 5, 2018

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

Y. B., the Claimant, completed some high school courses before she joined the paid workforce. She held a number of different jobs, mainly in manufacturing. The Claimant injured her shoulders and elbows while working. Then, through a provincial workers' compensation program, the Claimant completed her high school education and obtained a college business diploma. She worked in a busy cafeteria for about six months, and stopped because of pending shoulder surgery in 2002. The Claimant applied for a Canada Pension Plan (CPP) disability pension in 2015 and claimed that she was disabled by shoulder, elbow, left carpal tunnel, low back and hip pain. The Minister of Employment and Social Development refused the application and the Claimant appealed this decision to the Social Security Tribunal. The Tribunal's General Division dismissed the appeal. The Claimant's application for leave to appeal is refused because the General Division did not base its decision on any erroneous findings of fact under the *Department of Employment and Social Development Act* (DESD Act).

### ISSUES

[2] I must decide whether there is a reasonable chance that the appeal may succeed because:

a) the General Division failed to consider the impact of the Claimant's multiple conditions on her capacity to work;

b) the General Division erred by placing significant weight on the Claimant's participation in the educational upgrading program; or

c) the General Division failed to place significant weight on the medical report that said that the Claimant could not return to work.

## ANALYSIS

[3] The DESD Act governs the Tribunal's operation. It sets out the only grounds of appeal that can be considered. They are 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.<sup>1</sup> In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.<sup>2</sup> The Claimant's grounds of appeal must be considered in this context.

### **Issue 1: The General Division Considered the Claimant's Multiple Conditions**

[4] The CPP disability pension is a contributory program. A claimant must establish that they are disabled by the minimum qualifying period (MQP), which is a date calculated based on the claimant's contributions to the plan from their employment. Accordingly, whether a claimant becomes disabled or their condition deteriorates after that date, is irrelevant. In this case, the Claimant claimed that she was disabled by a number of medical conditions. However, she confirmed that only the injuries to her shoulders and elbows happened prior to the MQP.<sup>3</sup> The General Division considered these conditions and their impact on the Claimant's ability to work. The General Division did not err by failing to consider the Claimant's medical conditions that arose after the MQP. This ground of appeal does not have a reasonable chance of success on appeal.

### **Issue 2: the General Division Placed Significant Weight on the Claimant's Upgrading**

[5] It is not the diagnosis of a medical condition, but its impact on a claimant's capacity to work that must be considered when deciding whether a claimant is disabled.<sup>4</sup> The General Division summarized the evidence that was before it, including that the Claimant attended a full-time educational upgrading program for five and a half years.<sup>5</sup> She testified that she attended school for five to six hours each weekday and did five to six hours of homework each

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<sup>1</sup> Subsection 58(1) of the DESD Act.

<sup>2</sup> Subsection 58(2) of the DESD Act.

<sup>3</sup> Paragraph 8 of the decision.

<sup>4</sup> *Klabouch v. Canada (Social Development)*, 2008 FCA 33.

<sup>5</sup> Paragraph 10 of the decision.

day as well.<sup>6</sup> The Claimant then worked for six months in a fast-paced cafeteria job, which she stopped because of pending shoulder surgery.<sup>7</sup> The General Division weighed this evidence, along with the medical evidence to reach its decision. The General Division's mandate is to receive evidence from the parties, weigh it and reach a decision based on the law and the facts. Doing so was not an error. The Claimant's invitation to reweigh evidence to reach a different conclusion is not a ground of appeal that has a reasonable chance of success.<sup>8</sup>

### **Issue 3: The General Division Considered the Medical Report that Stated that the Claimant Could Not Work**

[6] Similarly, the Claimant argues that the General Division failed to consider a medical report written by her family physician that states that she could not return to work. This report was dated in October 2015, approximately 16 years after the MQP and speaks to the Claimant's condition at that time. The General Division correctly stated that the issue to be decided was not whether the Claimant was disabled after the MQP, but whether she had a severe and prolonged disability by the end of the MQP.<sup>9</sup> Accordingly, it gave little weight to evidence long after the MQP. Again, it is for the General Division to receive and weigh the evidence. The Claimant's disagreement with how this was done is not a ground of appeal that may have a reasonable chance of success on appeal.

[7] I have reviewed the materials filed in support of the application for leave to appeal and the written record. I am satisfied that the General Division did not overlook or misconstrue any important information. I am also satisfied that it did not make an error in law, and that it observed the principles of natural justice.

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<sup>6</sup> Paragraph 33 of the decision.

<sup>7</sup> Paragraph 35 of the decision.

<sup>8</sup> *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

<sup>9</sup> Paragraph 40 of the decision.

## CONCLUSION

[8] Leave to appeal is refused because the Claimant did not present a ground of appeal under the DESD Act that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVES:	Roderick Lesperance, for the Applicant
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