



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. G. v. Minister of Employment and Social Development*, 2018 SST 199

Tribunal File Number: AD-18-67

BETWEEN:

**L. G.**

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 28, 2018

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is granted.

### OVERVIEW

[2] L. G. (Claimant) worked in a casting plant for a number of years until it closed. He then worked in carpentry and home renovation until he was in a car accident in 2009. The Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled by injuries to his shoulders suffered in this accident, limitations in his thumbs and chronic obstructive pulmonary disease (COPD). The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Social Security Tribunal. The Tribunal's General Division dismissed the appeal. Leave to appeal is granted because the General Division may have failed to consider the combined impact of all of his conditions on his capacity to work.

### ISSUES

[3] Might there be a reasonable chance of success on appeal because the General Division erred as follows?

- a) by failing to consider the Claimant's COPD in combination with his other conditions;
- b) by failing to consider his lack of computer skills, Grade 12 education, poor memory and concentration in deciding that the Claimant could retrain; or
- c) by concluding that the fact that the Claimant turned down work demonstrated that he had capacity to work.

### ANALYSIS

[4] The *Department of Employment and Social Development Act* governs the Tribunal's operation. It sets out three grounds of appeal, 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.<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 grounds of appeal presented by the Claimant must be considered in this context.

### **Issue 1: Did the General Division consider the Claimant's COPD with his other conditions?**

[5] The Federal Court of Appeal teaches that when deciding whether a claimant is disabled, all of their conditions must be considered, not just the main ones.<sup>3</sup> The Claimant in this case suffered injuries to his shoulder and thumbs prior to the minimum qualifying period (MQP) (the date by which a claimant must be found to be disabled to receive a disability pension). He was diagnosed with COPD approximately four years after this date. The General Division decision summarizes all of the evidence that was before it. It concluded that while the Claimant may have been symptomatic for COPD at the MQP, there was insufficient evidence to find that this condition was disabling at that time.<sup>4</sup> It therefore did not consider the COPD in the context of the disability application.<sup>5</sup> The General Division therefore may not have considered all the Claimant's conditions or their combined impact on his capacity regularly to pursue any substantially gainful occupation at the MQP. This ground of appeal may have a reasonable chance of success.

### **Other Issues**

[6] The Claimant presented other grounds of appeal. However, because I have found one ground of appeal may have a reasonable chance of success, I need not consider the remaining grounds of appeal presented by the Claimant.<sup>6</sup>

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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> *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

<sup>4</sup> Paragraph 41 of the General Division decision.

<sup>5</sup> *Ibid.*

<sup>6</sup> *Mette v. Canada (Attorney General)*, 2016 FCA 276.

## CONCLUSION

[7] Leave to appeal is granted.

[8] The parties are not restricted to the grounds of appeal considered in this decision.

[9] It is easier to meet the legal test to be granted leave to appeal than it is to succeed on the appeal. This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVES:	Terry Copes, for the Claimant
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