



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. T. v. Minister of Employment and Social Development*, 2018 SST 377

Tribunal File Number: AD-18-179

BETWEEN:

E. T.

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: April 5, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted.

OVERVIEW

[2] E. T. (Claimant) completed her education in Hungary and ran a dog grooming business there prior to moving to Canada. In Canada, the Claimant completed some English-as-a-Second-Language training and obtained work in factory and restaurant settings. Her last job was in a fast food restaurant. In 2012, the Claimant fell on ice and injured her wrist. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by this injury and resulting physical limitations and mental illness. 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 to the Appeal Division is granted because the General Division may have based its decision on an erroneous finding of fact without regard for the evidence regarding the Claimant's mental illness.

ISSUES

[3] Does the appeal have a reasonable chance of success because the General Division erred as follows?

- a) by failing to consider evidence regarding the Claimant's mental illness;
- b) by concluding that her inability to obtain work was due to socio-economic factors;
- c) by failing to consider the aspect of regularity with respect to the Claimant's disability claim; or
- d) by improperly relying on the *Kiraly*¹ decision.

¹ *Kiraly v. Canada (Attorney General)*, 2015 FCA 66

ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out three grounds of appeal that can be considered: the General Division failed to observe a principle of natural justice or made a jurisdictional error; made an error in 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.² In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.³ The Claimant's arguments for leave to appeal must be considered in this context.

Did the General Division fail to consider evidence regarding the Claimant's mental illness?

[5] One ground of appeal under the DESD Act is that the General Division based its decision on an erroneous finding of fact. To succeed on this basis, the Claimant must establish three things: that the General Division made a finding of fact that was erroneous; that the finding of fact was made perversely, capriciously, or without regard for the material that was before it; and that the decision was based on this finding of fact. The Claimant argues that the General Division failed to consider evidence of her mental illness that supported her disability claim, including a psychiatrist's report and reports prepared for the Workplace Safety and Insurance Board.

[6] The General Division is not required to mention each and every piece of evidence that is before it.⁴ However, when a decision-maker fails to mention important evidence that points to a conclusion contrary to the decision, it is possible to infer that this contradictory evidence was overlooked.⁵ In this case the General Division decision dismisses the Claimant's evidence regarding her mental illness without considering its impact on her capacity regularly to pursue any substantially gainful occupation. This may have resulted in the General Division decision being based on findings of fact made without regard for all of the material that was before it. The appeal may have a reasonable chance of success on this basis.

² Subsection 58(1) of the DESD Act

³ Subsection 58(2) of the DESD Act

⁴ *Simpson v. Canada (Attorney General)*, 2012 FCA 82

⁵ *Cepeda-Gutierrez v. Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667

Other Issues

[7] The Claimant presents a number of other grounds of appeal. I have not considered them as I have concluded that the ground of appeal outlined above is one upon which the appeal may have a reasonable chance of success.⁶

CONCLUSION

[8] Leave to appeal is granted.

[9] The parties are not restricted to the ground of appeal considered above.

[10] 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:	Alexandra Victoros, for the Applicant
------------------	---------------------------------------

⁶ *Mette v. Canada (Attorney General)*, 2016 FCA 276