



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. P. v. Minister of Employment and Social Development*, 2018 SST 390

Tribunal File Number: AD-18-72

BETWEEN:

G. P.

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 6, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] G. P. (Claimant) completed high school and post-secondary training in cooking. He applied for a Canada Pension Plan disability pension and claimed that he was disabled by a bacterial infection in his leg from an injury, an arthritic knee, and abdominal and buttock muscle cramps and spasms, and anxiety. As a result of these conditions, he has pain, nausea, memory lapses, an inability to walk more than two blocks, and diarrhea. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to this Tribunal. The Tribunal's General Division dismissed the appeal. When the Claimant filed the application for leave to appeal the General Division's decision, he did not identify any grounds of appeal under the *Department of Employment and Social Development Act* (DESD Act). The Tribunal wrote to the Claimant and requested that he provide some grounds. The Claimant responded to the request and argues that the General Division failed to consider some of the evidence. Leave to appeal to the Tribunal's Appeal Division is refused because the General Division did not fail to consider all of the evidence before it.

ISSUES

[3] Did the General Division fail to consider the medical report dated December 30, 2016?

[4] Did the General Division fail to consider the Claimant's mental illness?

ANALYSIS

[5] The DESD Act governs the Tribunal's operation. It provides only three grounds of appeal that can be considered, namely, that 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.¹ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.² The Claimant's application for leave to appeal must be examined in this context.

Issue 1: Did the General Division fail to consider a medical report?

[6] One ground of appeal under the DESD Act is that the General Division based its decision on an erroneous finding of fact made without regard for the material that was before it.³ The Claimant argues that the General Division erred in this way because the decision did not refer to a medical report dated December 30, 2016. The Tribunal record does not contain any medical report dated December 30, 2016. The Claimant's doctor penned a report dated December 29, 2016, which was filed with the Tribunal prior to the General Division hearing. The Claimant also included a copy of this report with his application for leave to appeal. The General Division did in fact refer to the report in its decision.⁴ The decision concludes that the Claimant's severe cellulitis appeared to have resolved prior to the minimum qualifying period (the date by which a claimant must be found to be disabled to receive a disability pension) and that the Claimant's doctor did not mention it in his report of December 29, 2016.⁵ It is therefore clear that the General Division considered this evidence in making its decision. The appeal has no reasonable chance of success on the basis that the General Division failed to consider this medical report.

Issue 2: Did the General Division fail to consider the Claimant's mental illness?

[7] The Federal Court of Appeal teaches that, when deciding if a claimant is disabled, all of their medical conditions must be considered.⁶ The Claimant argues that leave to appeal should be granted because the General Division failed to consider his mental illness. However, the General Division did consider this. The decision states that the Claimant started treatment for abdominal pain, spasms and anxiety in July 2016, and his symptoms improved;⁷ that Dr. Roberts reported that the Claimant's chronic pain and chronic anxiety seemed to be doing substantially better;⁸ and that, while he still struggled with pain and anxiety, his treatment was ongoing and Dr.

¹ DESD Act, s. 58(1).

² DESD Act, s. 58(2).

³ DESD Act, s. 58(1)(c).

⁴ General Division decision, paragraphs 11 and 13.

⁵ *Ibid.*, paragraph 49.

⁶ *Bungay v. Canada (Attorney General)*, 2011 FCA 47.

⁷ General Division decision, paragraph 52.

⁸ *Ibid.*, paragraph 53.

Roberts' reports anticipated continued improvement.⁹ It is therefore clear that the General Division considered the Claimant's mental health. The appeal does not have a reasonable chance of success on this basis.

[8] The Claimant also included medical records with the application for leave to appeal. All but one of these documents had been filed with the Tribunal prior to the General Division hearing. The remaining document was dated March 2018, after the General Division decision was made. New evidence generally is not permitted on an appeal under the DESD Act.¹⁰ The presentation of this evidence does not establish a ground of appeal under the DESD Act.

[9] I have reviewed the General Division decision and the written record. I am satisfied that the General Division did not overlook or misconstrue any important information.

CONCLUSION

[10] Leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	G. P., self-represented
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⁹ *Ibid.*, paragraph 54.

¹⁰ *Canada (Attorney General) v. O'Keefe*, 2016 FC 503.