Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *G. G. v. Minister of Employment and Social Development*, 2018 SST 411

Tribunal File Number: AD-18-45

BETWEEN:

G. G.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: April 12, 2018

Canada

DECISION AND REASONS

DECISION

Leave to appeal is refused.

OVERVIEW

[1] The Applicant, G. G., who is now 61 years old, was born in India, where she earned a bachelor's degree. After immigrating to Canada in 1981, she worked as a dishwasher and later worked in a Burnaby hospital as a nurse's aide; she held this job for 24 years. In March 2013, while moving a patient, she sustained an injury to her left knee and has not worked since.

[2] In March 2016, the Applicant applied for a disability pension under the *Canada Pension Plan* (CPP). The Respondent, the Minister of Employment and Social Development (Minister), refused the application, finding insufficient evidence that the Applicant was disabled from performing suitable work during the minimum qualifying period (MQP), which was to end on December 31, 2016.

[3] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. On September 22, 2017, the General Division convened a hearing by teleconference but ultimately found that the Applicant had not demonstrated a severe disability, nor had she sought alternative employment that would be better suited to her physical limitations.

[4] On January 11, 2018, the Applicant requested leave to appeal from the Tribunal's Appeal Division. She emphasized how difficult it was for her to work with her injuries. The Tribunal asked the Applicant to provide additional reasons for her appeal, and she responded on February 4, 2018, describing the General Division's decision as "wrong" because nobody would hire her due to her age, lack of proficiency in English, and level of impairment. The Tribunal again informed the Applicant that her reasons were insufficient and reminded her of the grounds of appeal permitted under the *Department of Employment and Social Development Act*

(DESDA). On February 15, 2018, the Applicant faxed the Tribunal a letter that essentially reiterated her previous submissions.

[5] I have reviewed the General Division's decision against the underlying record and have concluded that the Applicant has not advanced any grounds that would have a reasonable chance of success on appeal.

ISSUES

[6] According to s. 58(1) of the DESDA, there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division first grants leave to appeal,[1] but the Appeal Division must first be satisfied that the appeal has a reasonable chance of success.[2] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[3]

[7] My task is to determine whether the Applicant has presented an arguable case that the General Division erred according to one or more of the grounds set out in the DESDA.

ANALYSIS

[8] The Applicant submits that the General Division dismissed her appeal despite evidence indicating that her condition was severe and prolonged according to the CPP criteria for disability. She argues that the General Division refused to recognize that her limitations have rendered her effectively unemployable, given her age and lack of proficiency in English.

[9] I do not see an arguable case for this ground.

[10] It is settled law that an administrative tribunal charged with fact finding is presumed to have considered all the evidence before it and need not discuss each and every element of a

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[1] DESDA at ss. 56(1) and 58(3)
[2] *Ibid*. at s. 58(1)
[3] *Fancy v. Canada (Attorney General)*, 2010 FCA 63

party's submissions.[4] That said, I have reviewed the General Division's decision and have found no indication that it ignored or gave inadequate consideration to any significant item of evidence. The General Division decision contains what appears to be a thorough summary of the Applicant's medical file, followed by an analysis that meaningfully discussed the documentary and oral evidence.

[11] In the end, the Applicant's submissions are essentially a summary of evidence and argument that were already presented to the General Division. She has not identified how, in coming to its decision, the General Division failed to observe a principle of natural justice, committed an error of law, or relied on an erroneous finding of fact. My review of its decision indicates that the General Division conducted a detailed analysis of the Applicant's reported medical conditions—principally knee and wrist pain—and whether they affected her capacity to regularly pursue substantially gainful employment as of the MQP. In doing so, it took into account her background—including her age, education, and work experience—but found that these factors were not significant impediments to her ability to perform alternate work. Citing *Inclima v. Canada*,[5] the General Division then drew an adverse inference from the Applicant's failure to actively investigate opportunities for less strenuous work. I see nothing to suggest that the General Division misapplied the law in doing so.

[12] Broad allegations of error are insufficient grounds of appeal. In the absence of detailed reasons, I find this claimed ground of appeal to be so broad as to amount to a request to retry the entire claim. If the Applicant is asking me to reassess the evidence and substitute my judgment for the General Division's, I am unable to do so. My authority as an Appeal Division member permits me to determine only whether any of an applicant's reasons for appealing fall within the grounds specified under s. 58(1) and whether any of these reasons have a reasonable chance of success.

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[4] *Simpson v. Canada (Attorney General)*, 2012 FCA 82
[5] *Inclima v. Canada (Attorney General)*, 2003 FCA 117

CONCLUSION

[13] Since the Applicant has not identified any grounds of appeal under s. 58(1) of the DESDA that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.

Member, Appeal Division

REPRESENTATIVE:	G. G., self-represented