



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. C. v. Minister of Employment and Social Development*, 2018 SST 578

Tribunal File Number: AD-18-224

BETWEEN:

**A. C.**

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: May 28, 2018

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] A. C. (Claimant) completed high school and has worked in physically demanding jobs. He was injured in a fall at work some years ago. He stopped working in 2004 as a result. He returned to work in 2014 for financial reasons, piling lumbar and “feeding a sawmill” from late 2014 until 2016.

[3] The Claimant has applied for a Canada Pension Plan disability pension five times. In the current application, he claimed that he was disabled by a number of medical conditions including neck and back pain, diabetes, allergies, back spasms and neuropathic pain. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal’s General Division dismissed the appeal; it determined that although the Claimant had limitations from pain and his other medical conditions, his disability was not severe. Leave to appeal is refused because the Claimant’s new evidence cannot be considered.

### PRELIMINARY MATTER

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal’s operation. It sets out only three narrow grounds of appeal, 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.<sup>1</sup> The DESD Act also provides that leave to appeal to the Appeal Division is to be refused if the appeal has no reasonable chance of success.<sup>2</sup>

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<sup>1</sup> DESD Act, s. 58(1)

<sup>2</sup> DESD Act, s. 58(2)

[5] The Claimant based his request for leave to appeal on a new medical claim form dated just after the General Division hearing. The Tribunal wrote to the Claimant and asked that he confirm whether he wished to appeal the General Division decision or apply to rescind or amend the General Division decision based on new facts.<sup>3</sup> The Claimant responded that he wished to appeal the General Division decision.

## ISSUE

[6] Is there a reasonable chance that the appeal will succeed based on the Claimant's new evidence?

## ANALYSIS

[7] The Claimant contends that his appeal should be reconsidered based on new medical information. He included a claim form for his extended health care benefits with the application for leave to appeal. This document refers to a left shoulder problem, and pain in his shoulder, neck, and back. The Claimant argues that his return to work from 2014 to 2016 made his condition worse. I must decide whether the Claimant has presented a ground of appeal that falls within the DESD Act, and whether the appeal has a reasonable chance of success.

[8] The presentation of new evidence is not a ground of appeal under the DESD Act. New evidence is not normally permitted on an appeal.<sup>4</sup> The new evidence the Claimant presents does not point to any error made by the General Division. Therefore, it is not to be considered, and leave to appeal cannot be granted on the basis of its presentation.

[9] In addition, in its decision, the General Division correctly stated that it had to decide whether the Claimant became disabled during a "window period" of January 1, 2007, to December 31, 2011.<sup>5</sup> It summarized the evidence that was before it,<sup>6</sup> weighed the evidence, and decided that the Claimant was not disabled at this time. Any deterioration in the Claimant's condition after he returned to work in 2014 was not relevant to the General Division's decision.

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<sup>3</sup> Under s. 66 of the DESD Act, a party may apply to have a decision rescinded or amended based on a new material fact that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

<sup>4</sup> *Canada (Attorney General) v. O'Keefe*, 2016 FC 503

<sup>5</sup> General Division decision, para. 32

<sup>6</sup> General Division decision, paras. 10–29

Therefore, the appeal has no reasonable chance of success based on the deterioration in the Claimant's health after he returned to work in 2014.

[10] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important evidence.

**CONCLUSION**

[11] Leave to appeal is refused.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	A. C., self-represented
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