



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. L. v. Minister of Employment and Social Development*, 2018 SST 686

Tribunal File Number: AD-18-364

BETWEEN:

K. L.

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: June 21, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] K. L. (Claimant) worked until 2006 when she was injured and had permanent restrictions in both hands. She began to receive a Canada Pension Plan retirement pension in October 2013, and applied for a Canada Pension Plan disability pension in July 2016. The Minister of Employment and Social Development (Minister) refused the disability pension application because a claimant cannot receive a retirement pension and a disability pension at the same time, and the Claimant had applied for a disability pension after the time allowed to convert a retirement pension to a disability pension.

[3] The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division dismissed the appeal because the Claimant had applied for a disability pension beyond the time permitted to convert her retirement pension to a disability pension, and the Tribunal has no jurisdiction to deal with issues regarding erroneous advice given by the Minister. Leave to appeal is refused because the General Division did not make any error in the exercise of its jurisdiction.

ISSUE

[4] Is there a reasonable chance of success on appeal because the General Division improperly exercised its jurisdiction regarding the Claimant's claim that she was given erroneous advice by the Minister?

ANALYSIS

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides only three 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.¹ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.² So, to be granted leave to appeal, the Claimant must present a ground of appeal that falls under the DESD Act and upon which the appeal has a reasonable chance of success.

[6] The General Division decision correctly states that when a claimant is receiving a Canada Pension Plan retirement pension, in order to convert that to a disability pension, they must be found to be disabled prior to when they began to receive the retirement pension. In addition, the earliest a claimant can be deemed disabled is 15 months prior to when the disability pension application was received by the Minister.³ In this case, the Claimant applied for a disability pension in July 2016. This was 23 months after she began to receive the retirement pension.⁴

[7] The decision also sets out an exception to the 15-month maximum retroactivity—if a claimant was incapable of forming or expressing the intention to apply for the disability pension.⁵ The General Division considered the Claimant’s evidence regarding incapacity and concluded that she was not incapable of forming or expressing an intention to apply for the disability pension.⁶ The Claimant does not suggest that it made any error in this regard.

[8] The General Division decision also correctly states that the Tribunal does not have jurisdiction to consider whether the Minister gave her erroneous advice or made an administrative error with respect to her applications for Canada Pension Plan pensions. However, prior to deciding the appeal, the Tribunal placed the file in abeyance so that the Minister could consider this issue. It completed an investigation and concluded that no erroneous advice had been given.

[9] The Claimant argues that by placing the appeal in abeyance to permit the Minister’s investigation, it exercised jurisdiction over this issue. However, the decision states that the Claimant asked that the Minister investigate this issue, that it did and concluded that no erroneous advice had been given, and that the Claimant had 30 days to appeal this decision to the

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ General Division decision para. 5

⁴ General Division decision para. 2

⁵ *Ibid.* paras. 8–9

⁶ *Ibid.* para. 21

Federal Court.⁷ The General Division made no decision about whether the Minister gave the Claimant erroneous advice. It simply allowed time for the Minister to investigate the issue, and for the Claimant to exercise a right of appeal from the Minister's decision. It did not exercise any jurisdiction over this issue. Therefore, this ground of appeal does not point to any jurisdictional error made by the General Division. The appeal does not have a reasonable chance of success on this basis.

[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:	J. L., for the Applicant
-----------------	--------------------------

⁷ General Division decision para. 22