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

Citation: *I. A. v. Minister of Employment and Social Development*, 2018 SST 726

Tribunal File Number: AD-18-360

BETWEEN:

I. A.

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: July 12, 2018

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, I. A., has a high school education and training as a licensed practical nurse. She is now 52 years old. In September 2015, she injured her left shoulder in a motor vehicle accident. She returned to her job as a home care aide but aggravated her injury six months later while moving a patient

[3] In March 2017, 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 Applicant's application on the grounds that she had produced insufficient medical evidence that she was disabled under the definition set out by the CPP.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. In February 2018, the General Division held a hearing by teleconference and ultimately found that the Applicant was capable of substantially gainful work as of the hearing date.[1]

[5] On June 7, 2018, the Applicant requested leave to appeal from the Tribunal's Appeal Division. She expressed her disagreement with the General Division's decision to deny her benefits and listed her medical conditions, which she said included three tears to her left rotator cuff, a frozen shoulder, spinal osteoarthritis, bilateral carpal tunnel syndrome, and a concussion. She added that she had recently been diagnosed with severe spinal stenosis. She insisted that she could not work and noted that she had difficulty doing something as simple as getting out of bed.

[6] The Applicant subsequently submitted a medical imaging report, dated May 25, 2018, detailing the results of a CT scan of her lumbar spine.

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[1] The General Division determined that the minimum qualifying period was due to end on December 31, 2019.

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

ISSUES

[8] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: the General Division failed to observe a principle of natural justice; erred 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. An appeal may be brought only if the Appeal Division first grants leave to appeal.[2] To grant leave for appeal, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[3] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[4]

[9] I must decide whether the Applicant has raised an arguable case that the General Division erred according to one or more of the grounds set out in the DESDA.

ANALYSIS

[10] The Applicant submits that the General Division dismissed her appeal despite evidence her condition was severe and prolonged according to the CPP criteria for disability. She argues that the General Division refused to recognize that her medical conditions have rendered her effectively unemployable.

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

[12] 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 party's submissions.[5] 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 aspect of the

[2] DESDA, at ss. 56(1) and 58(3).
[3] *Ibid*., at s. 58(2).
[4] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[5] *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

Applicant's condition. 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.

[13] In the end, the Applicant's submissions are essentially a summary of evidence and arguments that were already presented to the General Division. The Applicant 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 shoulder pain and migraine headaches—and their impact on her capacity to regularly pursue substantially gainful employment. In doing so, it took into account Dr. Villasenor's opinion that the Applicant is disabled but found that it was outweighed by the fact that she had been employed in a retail store since November 2016. In particular, the General Division found that working, as the Applicant testified she does, 24 to 30 hours per week at $11.35 per hour, generated earnings that exceed the threshold for "substantially gainful" mandated by section 68.1 of the *Canada Pension Plan Regulations.* I see no error of either fact or law in this determination.

[14] 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 subsection 58(1) of the DESDA and whether any of these reasons have a reasonable chance of success.

[15] Finally, I note that the Applicant has submitted a medical report that was prepared after the General Division's decision was issued. An appeal to the Appeal Division is not ordinarily an occasion on which additional evidence can be considered, given the constraints of the DESDA, which do not give the Appeal Division any authority to make a decision based on the merits of the case. Once a hearing before the General Division has concluded, there is a very limited basis upon which any new or additional information can be raised. An applicant could consider

making an application to the General Division to rescind or amend its decision, but he or she would have to comply with the requirements set out in section 66 of the DESDA, as well as sections 45 and 46 of the *Social Security Tribunal Regulations.* Not only are there strict deadlines and requirements that must be met to succeed in an application to rescind or amend, but an applicant would also need to demonstrate that any new facts are material and that they could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

CONCLUSION

[16] Since the Applicant has not identified any grounds of appeal under subsection 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:	I. A., self-represented