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

Citation: *G. H. v. Minister of Employment and Social Development*, 2018 SST 706

Tribunal File Number: AD-18-294

BETWEEN:

G. H.

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: June 29, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, G. H., is a high school graduate who has worked in a variety of occupations—as a construction worker, equipment operator, and forklift driver. He is now 62 years old. He was most recently employed as a snow plow operator during the winter of 2015–16. In December 2016, he was hospitalized following a severe asthma attack. During his three-week admission, a CT scan revealed that he had a brain aneurysm, prompting the Ministry of Transportation to suspend his driver's license. In March 2017, the aneurysm ruptured, requiring immediate neurosurgery.

[3] That same month, 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 he had produced insufficient medical evidence that he was disabled, as defined by the CPP, prior to August 2016, the month he began receiving his CPP retirement pension.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. In March 2018, the General Division held an in-person hearing and ultimately found that the Applicant was capable of substantially gainful work as of July 31, 2016.

[5] On May 2, 2018, the Applicant's common-law spouse and authorized representative requested leave to appeal from the Tribunal's Appeal Division. She expressed disagreement with the General Division's decision, noting that the Applicant's aneurysm had left him with short-term memory loss and robbed him of his ability to earn a living. She said that the Applicant had no income other than his modest CPP retirement pension, which, as he kept being told, was an obstacle to the approval of his disability application. She asked the Appeal Division to show compassion by helping the Applicant. Included with the application for leave to appeal were statements, both dated April 16, 2018, from the Applicant's daughter and step-daughter.

[6] On June 4, 2018, the Tribunal asked the Applicant to provide additional reasons for his appeal. On June 20, 2018, the Applicant's representative replied, "Everything I have sent you is all there is." She referred to the medical reports already on file and expressed pessimism that her partner's application would be approved. On June 22, 2018, the Applicant's representative forwarded a recent email from Dr. Ron Levy, the Applicant's neurosurgeon, who noted that one-third of people who have suffered subarachnoid hemorrhages die and another third cannot return to their previous way of life. He also said that the Applicant's situation was "awful."

[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 s. 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.[1] To grant leave for appeal, the Appeal Division must 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]

[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 his appeal despite evidence indicating that his condition was severe and prolonged, according to the CPP criteria for

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

disability. He argues that the General Division refused to recognize that his medical condition has rendered him 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.[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 history, followed by an analysis that meaningfully discussed the documentary and oral evidence.

[13] In the end, the Applicant's submissions to the Appeal Division are essentially a restatement of evidence that he has already presented to the General Division. He 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. As provided by s. 66.1(1.1) of the CPP, the Applicant could have been eligible for a disability pension only if he were disabled, or deemed to be disabled, before August 2016, the month his retirement pension first became payable. Under ss. 44(1)(*b*) and 70(3) of the CPP, a person cannot receive CPP retirement and disability pensions at the same time, although one can cancel the former in favour of the latter, subject to a six-month time limitation. There was no indication that the Applicant cancelled his retirement pension in favour of a disability pension within six months. The General Division assessed the available evidence and dismissed the Applicant's appeal largely because his asthma attack and ruptured aneurysm did not occur until more than four months after his eligibility period ended. In my view, given the available evidence about the Applicant's medical and work history, this is a defensible conclusion.

[14] The Applicant also suggests that he should be granted relief on compassionate grounds, but the General Division was bound to follow the letter of the law, and so am I. If the Applicant is asking me to exercise fairness and reverse the General Division's decision, I lack the discretionary authority to do so and can exercise only such jurisdiction as granted by the

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

DESDA. Support for this position may be found in *Pincombe v. Canada*,[5] among other cases, that held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.

[15] Broad allegations of error are insufficient grounds of appeal. In the absence of detailed reasons, I find that the Applicant's reasons for appealing 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 a claimant's reasons for appealing fall within the grounds specified under s. 58(1) of the DESDA and whether any of these reasons have a reasonable chance of success.

[16] Finally, I note that the Applicant has submitted documents that were 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 s. 66 of the DESDA, as well as ss.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.

5. *Pincombe v. Canada (Attorney General)*, [1995] FCJ No. 1320 (FCA).

CONCLUSION

[17] Because the Applicant has not identified any grounds of appeal that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.

Member, Appeal Division

REPRESENTATIVE:	M. S., for the Applicant