



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. J. v. Minister of Employment and Social Development*, 2018 SST 721

Tribunal File Number: AD-18-336

BETWEEN:

J. J.

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: July 10, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] J. J. (Claimant) moved to Canada in 2005 after completing his education and working in Germany. In Canada, he worked in physically demanding positions as a welder and an electrician. He stopped working in June 2015, and in August 2015, he underwent heart surgery that included a valve replacement and bypass. He has not looked for work since then.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled by the heart surgery and resulting limitations, including physical restrictions and fatigue. He also has atrial fibrillation, which is treated with medication. 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 because it found that the Claimant retained some capacity to work and did not pursue any work within his restrictions. Leave to appeal is refused because the Claimant has not presented any ground of appeal under the *Department of Employment and Social Development Act* (DESD Act) upon which the appeal has a reasonable chance of success.

PRELIMINARY MATTER

[4] The Claimant's application for leave to appeal did not include any grounds of appeal under the DESD Act. The Tribunal wrote to the Claimant and asked that he explain why he wanted to appeal the General Division decision and the legal basis for this appeal. The Claimant responded to this letter. His response factored into this decision.

ISSUES

[5] Does the appeal have a reasonable chance of success based on at least one of the following arguments?

- a) The General Division erred by failing to consider evidence that the Claimant is disabled; or
- b) The General Division erred by referring to the Claimant's last employer by the wrong name.

ANALYSIS

[6] To be granted leave to appeal, the Claimant must present a ground of appeal under the DESD Act. There are only three, 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, the DESD Act states that leave to appeal is to be refused if the appeal has no reasonable chance of success.²

Issue 1: Did the General Division fail to consider evidence that the Claimant is disabled?

[7] One ground of appeal under the DESD Act is that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material that was before it. To succeed on appeal on this basis, a claimant must prove three things: that a finding of fact was erroneous (made in error), that it was made in a perverse or capricious manner or without regard for the evidence, and that the General Division decision was based on this finding of fact.

[8] In this case, the Claimant argues that the evidence established that he is disabled and that he did not know what else he could do to prove this. I have read the General Division decision and the written evidence. The General Division decision contains a thorough summary of the written and oral evidence that was before it.³ It did not overlook or misconstrue any important information. The General Division considered the evidence. It specifically considered that the Claimant's family physician wrote that the Claimant might be able to perform very light-duty work that did not require heavy lifting or climbing ladders.⁴ In addition, the Claimant's atrial fibrillation has been controlled since March 2017.⁵ The General Division therefore concluded

¹ DESD Act s. 58(1)

² *Ibid.* s. 58(2)

that although the Claimant has limitations, they did not render him incapable regularly of pursuing any substantially gainful occupation.

[9] The General Division set out the evidentiary basis for this conclusion. There is no indication that the conclusion was based on any erroneous finding of fact or that the General Division failed to consider any of the evidence that was before it. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

Issue 2: Did the General Division refer to the Claimant’s employer incorrectly?

[10] The Claimant also contends that he worked for X Electric for one and one half years, then for a welding company for approximately five years. The General Division decision states that “[h]e worked for a company Olex Electric and then for five years, he worked as a welder...”⁶ The General Division made an error regarding the name of the Claimant’s employer. However, the General Division decision was not based on the name of the Claimant’s employer; it was based on the Claimant’s capacity to work. The General Division concluded that although he could not perform physically demanding work as he had previously, the Claimant retained some capacity for sedentary work.

[11] Therefore, although the General Division made this error, this argument does not disclose a ground of appeal under the DESD Act because the decision was not based on the error.

³ General Division decision paras. 4–20

⁴ *Ibid.* para. 28

⁵ *Ibid.* para. 29

⁶ *Ibid.* para. 12

CONCLUSION

[12] I am sympathetic to the Claimant's circumstances. However, leave to appeal is refused because the Claimant has not presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	J. J., self-represented
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