



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. K. v. Minister of Employment and Social Development*, 2018 SST 807

Tribunal File Number: AD-18-185

BETWEEN:

A. K.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: August 14, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] A. K. (Claimant) completed Grade 11 before entering the paid workforce. He worked for several years in telecommunications. He worked “in the field” until his health deteriorated so much that he could no longer do so. Then, his employer allowed him to work from home, preparing documents to finish a project until March 2016. The Claimant applied for and began to receive a Canada Pension Plan retirement pension in April 2015. The Claimant has had kidney disease since 2011 and began regular dialysis treatment in March 2016. He applied for a Canada Pension Plan disability pension and claimed that he was disabled by the kidney disease.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal’s General Division summarily dismissed the Claimant’s appeal, finding that it had no reasonable chance of success because the Claimant did not claim to be disabled before he began receiving the retirement pension. The appeal is dismissed because the General Division made no errors under the *Department of Employment and Social Development Act* (DESD Act), and the appeal cannot be allowed on compassionate grounds.

ANALYSIS

[4] The Tribunal was created by legislation, so it has only the legal authority granted to it under legislation. The DESD Act sets out only three narrow grounds of appeal that the Appeal Division can consider, 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. It cannot consider or grant any remedy on compassionate grounds.

[5] The Claimant does not suggest that the General Division made any errors in its decision. I have reviewed the General Division decision and the written record. The General Division did

not overlook or misconstrue any important information. It observed the principles of natural justice. The General Division did not make any errors in law or jurisdiction. It correctly stated that in order for a claimant to be able to replace a retirement pension with a disability pension, they must be found to be disabled before they began to receive the retirement pension. The Claimant was not disabled when he began to receive the retirement pension because he continued working in telecommunications for approximately one year after this time.

[6] I have great sympathy for the Claimant and his circumstances. He is congratulated for persevering and working in spite of a very serious disease. However, the DESD Act does not give the Tribunal any legal authority to allow an appeal or to grant a disability pension based on compassionate grounds.

CONCLUSION

[7] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
APPEARANCES:	A. K., Appellant Matthew Vens, Counsel for the Respondent