



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. K. v. Minister of Employment and Social Development*, 2018 SST 850

Tribunal File Number: AD-18-444

BETWEEN:

**L. K.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

Leave to Appeal Decision by: Jude Samson

Date of Decision: August 31, 2018

## DECISION AND REASONS

### DECISION

[1] The application requesting leave to appeal is refused.

### OVERVIEW

[2] In January 2017, the Applicant, L. K., applied for a disability pension under the terms of the *Canada Pension Plan* (CPP). According to her application, she had to stop working as a registered practical nurse in March 2015 because of her depression and anxiety. Importantly, however, the Applicant later admitted that:

- a) her condition had improved by March 2017;
- b) she returned to work on modified duties from July until November 2017, at which time she stopped working for non-medical reasons; and
- c) she started to receive her CPP retirement pension in December 2017.

[3] The Applicant's application for a CPP disability pension was refused by the Respondent, the Minister of Employment and Social Development (Minister). The Applicant appealed the Minister's decision to the Tribunal's General Division, but it dismissed her appeal. The Applicant is now trying to appeal the General Division decision to the Tribunal's Appeal Division, but she requires leave (or permission) for the file to move forward.

[4] Unfortunately for the Applicant, I have concluded that the appeal has no reasonable chance of success. As a result, leave to appeal must be refused.

### ISSUES

[5] In reaching this decision, I considered the following issues:

- a) Do any of the Applicant's arguments fall within a recognized ground of appeal and, if so, do they amount to an arguable ground on which the appeal might succeed?
- b) Did the General Division arguably overlook or misconstrue relevant evidence?

## ANALYSIS

### The Appeal Division's Legal Framework

[6] The Tribunal has two divisions that operate quite differently from one another. At the Appeal Division, the focus is on whether the General Division might have committed one or more of the three errors (or grounds of appeal) set out in section 58(1) of the *Department of Employment and Social Development Act* (DESD Act). Generally speaking, the only relevant errors concern whether the General Division:

- a) breached a principle of natural justice or made an error relating to its jurisdiction;
- b) rendered a decision that contains an error of law; or
- c) based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[7] There are also procedural differences between the Tribunal's two divisions. The Appeal Division's process is in two stages: the leave to appeal stage followed by the merits stage. This appeal is at the leave to appeal stage, meaning that permission must be granted for it to proceed. This is a preliminary hurdle aimed at filtering out cases that have no reasonable chance of success.<sup>1</sup> The legal test that applicants need to meet at this stage is a low one: is there any arguable ground upon which the appeal might succeed?<sup>2</sup> Applicants have the responsibility of showing that this legal test has been met.<sup>3</sup>

#### **Issue 1: Do any of the Applicant's arguments fall within a recognized ground of appeal and, if so, do they amount to an arguable ground on which the appeal might succeed?**

[8] By way of background, the General Division noted that, in order to be entitled to a disability pension, the Applicant had to have a severe and prolonged disability on or before November 30, 2017. A disability is considered severe if the claimant is incapable regularly of

---

<sup>1</sup> DESD Act, s 58(2).

<sup>2</sup> *Osj v Canada (Attorney General)*, 2016 FC 115 at para 12; *Ingram v Canada (Attorney General)*, 2017 FC 259 at para 16.

<sup>3</sup> *Tracey v Canada (Attorney General)*, 2015 FC 1300 at para 31.

pursuing any substantially gainful occupation, and is considered prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.<sup>4</sup>

[9] The General Division accepted that the Applicant had a severe disability from March 4, 2015, to December 31, 2016. Although the Applicant claims to have been disabled until March 2017, and did not actually return to work until July 2017, the General Division based its decision on the advice of the Applicant's family physician, who said that she was fit to return to work in January 2017.<sup>5</sup>

[10] On the question of prolonged, the General Division stressed that the Applicant's disability had to be of indefinite duration and that the purpose of the CPP is not to provide benefits to people who have a medical condition that temporarily prevents them from working.<sup>6</sup> Since the Applicant's disability was not of indefinite duration, the General Division concluded that it was not prolonged within the meaning of the CPP.

[11] On appeal, the Applicant is essentially arguing that, because she was unable to work for two years—from March 2015 to March 2017—she had a severe and prolonged disability that entitles her to a CPP disability pension during that period.

[12] The Applicant is challenging the General Division's conclusion but has not truly specified what error it might have committed in reaching its conclusion.

[13] At a minimum, applicants should provide some detail about the error they believe the General Division has committed and about how that error falls within one of the three grounds of appeal set out in section 58(1) of the DESD Act.<sup>7</sup> In this case, the Applicant has not done either of those things, and there are no relevant errors in the General Division's analysis that are immediately obvious to me.

---

<sup>4</sup> CPP, s 42(2)(a).

<sup>5</sup> General Division decision at para 9.

<sup>6</sup> *Canada (Minister of Human Resources Development) v Henderson*, 2005 FCA 309 at para 11.

<sup>7</sup> *Marcia v Canada (Attorney General)*, 2016 FC 1367.

**Issue 2: Did the General Division arguably overlook or misconstrue relevant evidence?**

[14] Regardless of the conclusion above, I am mindful of Federal Court decisions in which the Appeal Division has been instructed to go beyond the four corners of the written materials and consider whether the General Division might have misconstrued or failed to properly account for any of the evidence.<sup>8</sup> If this is the case, then leave to appeal should normally be granted regardless of any technical problems that might be found in the request for leave to appeal.

[15] After reviewing the documentary record and examining the decision under appeal, I am satisfied that the General Division neither overlooked nor misconstrued relevant evidence. Rather, the General Division identified the period during which the Applicant had a severe disability but rightly concluded that it did not entitle the Applicant to a disability pension under the terms of the CPP.

**CONCLUSION**

[16] While I have sympathy for the Applicant, I have concluded that her application requesting leave to appeal has no reasonable chance of success. As a result, leave to appeal is refused.

Jude Samson  
Member, Appeal Division

REPRESENTATIVE:	L. K., self-represented
-----------------	-------------------------

---

<sup>8</sup> *Griffin v Canada (Attorney General)*, 2016 FC 874 at para 20; *Karadeolian v Canada (Attorney General)*, 2016 FC 615 at para 10.