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

Citation: *T. C. v. Minister of Employment and Social Development*, 2018 SST 873

Tribunal File Number: AD-18-383

BETWEEN:

T. C.

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: September 6, 2018

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, T. C., was diagnosed with breast cancer in May 2016. At the time, she was 45 years old and working as a waitress. She left her job to receive treatment, which included surgery, radiotherapy and chemotherapy. Her oncologist has estimated that there is a 30 percent chance of her cancer recurring.

[3] In August 2016, she applied for disability benefits under the *Canada Pension Plan* (CPP), claiming that she could no longer work because of fatigue, weakness and depression. The Respondent, the Minister of Employment and Social Development (Minister), refused the Applicant's application on the ground that she had produced insufficient medical evidence that her disability was "severe and prolonged" as defined by the CPP.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. On April 5, 2018, the General Division held a hearing by videoconference but ultimately found that the Applicant was, more likely than not, able to perform substantially gainful work. The General Division acknowledged that the Applicant had experienced side-effects as a result of her treatments, but found that her symptoms had diminished and were likely to see further improvement with time. The General Division also attributed to the Applicant a "baseline work capacity," based on her testimony that she had resumed employment as a part-time restaurant server.

[5] On June 15, 2018, the Applicant's authorized representative requested leave to appeal from the Tribunal's Appeal Division. He alleged that the General Division had made an important error regarding the facts, but otherwise offered no details. On June 21, 2018, the Tribunal asked the representative to provide additional reasons for the appeal. The representative responded by forwarding a letter dated June 22, 2018, from Dr. James Snodgrass, who declared the Applicant unable to work for more than 15 hours per week. The Tribunal again asked for

more reasons, to which the representative replied, by way of a letter dated August 10, 2018, that the Applicant had suffered from cancer for many years and would be disabled for the rest of her life. The representative referred to the Applicant's medical file and claimed that "initial response at the beginning of the application was unfair. It was unclear how long the disability will last for and this has been clarified with this letter."

[6] 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.

ISSUE

[7] 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 to 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]

[8] My task is to determine whether the Applicant has put forward any grounds that fall under the categories specified in s. 58(1) of the DESDA and, if so, whether any of them raise an arguable case on appeal.

ANALYSIS

New Document

[9] The Applicant's request for leave to appeal was accompanied by an update from her family physician that was prepared after the General Division hearing. I cannot consider this document, given the constraints of s. 58(1) of the DESDA, which does not permit the Appeal

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

Division to admit new evidence or hear arguments on the merits of disability. Once a hearing is concluded, there is a very limited basis upon which any new or additional information can be raised, although a claimant does have the option of making an application to the General Division to rescind or amend its decision.[4]

Alleged Failure to Consider the Evidence

[10] Despite repeated requests for clarification, the Applicant's reasons for appealing remain vague. In the end, her submissions amount to a plea for the Appeal Division to reconsider the evidence and decide in her favour. Unfortunately, I am unable to do so, because my authority permits me to determine only whether any of the Applicant's reasons for appealing fall within the grounds listed in s. 58(1) and whether any of them have a reasonable chance of success. It is not sufficient for a claimant to merely state their disagreement with the General Division's decision, nor is it enough to express their continued conviction that their health conditions render them disabled within the meaning of the CPP.

[11] Implicit in the Applicant's submissions is an argument that the General Division gave inadequate consideration to evidence that, in her view, proves a severe and prolonged disability. I do not see a reasonable chance of success on this point. While the Applicant may not agree with the General Division's conclusions, it was within its authority to assess the available evidence as it saw fit. In *Simpson v. Canada*,[5] the Federal Court of Appeal held:

> [A]ssigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact…

[12] In this case, the General Division made its decision after conducting what appears to be a reasonably comprehensive survey of the evidentiary record. It analyzed the Applicant's medical issues—including pain and stiffness in her right arm and shoulder following a lumpectomy—and

[4] A claimant seeking to rescind or amend a decision of the General Division must comply with the requirements set out in s. 66 of the DESDA and ss.45 and 46 of the *Social Security Tribunal Regulations*, which impose strict deadlines and require an applicant to demonstrate that any new facts are material and could not have been discovered at the time of the hearing without exercise of reasonable diligence.
[5] *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

how they affected her capacity to regularly pursue substantially gainful employment. In doing so, the General Division found that her condition was improving and was therefore not prolonged. It also placed weight on the fact that she had resumed working on a part-time basis and was able to carry out her job duties consistently and without accommodation. I see no indication that the General Division mispresented, ignored or gave inadequate consideration to any significant component of the evidence that was before it.

CONCLUSION

[13] Since 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:	Christopher Holm, for the Applicant