



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. M. v. Minister of Employment and Social Development*, 2018 SST 1195

Tribunal File Number: AD-18-732

BETWEEN:

A. M.

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: November 22, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] A. M. (Claimant) last worked in a housekeeping position part-time from 2012 to 2014. She stopped working to undergo surgery for carpal tunnel syndrome. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by this and several other conditions, including asthma, mental illness, a hernia, problems with her back, leg, and neck and lumbar facet disc disease. The Respondent, the Minister of Employment and Social Development, refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division held a teleconference hearing and dismissed the appeal, finding that, although the Claimant has a number of medical conditions, they did not render her incapable regularly of pursuing any substantially gainful occupation at the minimum qualifying period (MQP) of December 31, 2010, or at the prorated date of September 30, 2011.

[3] The Claimant's application for leave to appeal this decision to the Tribunal's Appeal Division is refused because the appeal does not have a reasonable chance of success based on the grounds that the Claimant has raised: the General Division failed to observe the principles of natural justice and it based its decision on an erroneous finding of fact regarding the Claimant's lumbar facet disc disease or the outcome of its treatment.

ISSUES

[4] Does the appeal have a reasonable chance of success on the ground that the General Division failed to observe a principle of natural justice?

[5] Does the appeal have a reasonable chance of success on the ground that the General Division 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 regarding the Claimant's lumbar facet disc disease?

ANALYSIS

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that the Tribunal can consider. They are 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 that it made in a perverse or capricious manner or without regard for the material before it.¹ In addition, leave to appeal is refused if the appeal has no reasonable chance of success.² In this context, the Tribunal will consider the Claimant's arguments that the General Division failed to observe a principle of natural justice and based its decision on an erroneous finding of fact.

Issue 1: Natural justice

[7] The principles of natural justice are concerned with ensuring that all parties to an appeal have the opportunity to present their legal case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an impartial decision-maker based on the law and the facts. The Claimant argues that the General Division failed to observe these principles by failing to consider all of the facts of her case. These facts include that the lumbar facet disc disease may have existed at the MQP (the date by which a claimant must be found to be disabled to receive the disability pension), and that it has no cure. However, a failure to consider relevant facts is not a breach of the principles of natural justice. This argument does not suggest that the General Division failed to give the Claimant the opportunity to present her case or to answer the legal case against her. Therefore, the appeal does not have a reasonable chance of success on this basis.

Issue 2: Erroneous finding of fact

[8] The Claimant also contends that the General Division based its decision on erroneous findings of fact that it made without regard for the material before it. First, the Claimant says that the General Division did not properly consider that she had upcoming appointments regarding her lumbar disc condition. However, the General Division had to decide based on the evidence before it whether the Claimant was disabled on or before the MQP, which was December 31,

¹ DESD Act, s 58(1).

² DESD Act, s 58(2).

2010, or the prorated date of September 30, 2011. The General Division could not have possibly evaluated evidence that it did not yet have. It therefore made no error when it did not consider this evidence.

[9] In addition, the promise to provide further or more up-to-date evidence is not a ground of appeal under the DESD Act. The appeal does not have a reasonable chance of success because the Claimant may provide additional evidence.

[10] Second, the Claimant argues that the General Division erred when it stated that the lumbar facet disc disease was diagnosed in 2018, because it is a progressive condition and no doctor can state definitively when it would have begun. The General Division did state this,³ but the decision was not based on this fact. The General Division accepted that the Claimant had chronic pain for a number of years,⁴ and it found that, despite having several medical conditions, the Claimant was still capable of pursuing a substantially gainful occupation after the MQP; she demonstrated this by her work efforts.⁵ The appeal does not have a reasonable chance of success on the basis that the General Division stated that the Claimant's disc condition began in 2018.

[11] Third, the Claimant argues that the General Division erred when it stated that medication would improve her condition because there is no cure for her lumbar condition. However, the General Division decision states that at the time of the hearing, the Claimant had only used Gabapentin for 3 days and had not yet tried the recommended injections for her lumbar facet disc disease. Therefore further treatment options were available which may improve the Claimant's capacity and function ability.⁶ It does not state that treatment would cure the Claimant's conditions, only that it might improve her capacity and functional ability. This is not erroneous. Therefore, there is no reasonable chance of success on appeal based on this.

[12] Finally, the Claimant argues that she is unemployable now and the General Division erred when it considered her condition approximately ten years ago. However, the Claimant's MQP ended December 31, 2010, or on the prorated date of September 30, 2011. Therefore, the

³ General Division decision at para 12.

⁴ *Ibid.*

⁵ *Ibid.* para 23.

⁶ *Ibid.* para 12.

General Division correctly considered her capacity regularly to pursue any substantially gainful occupation at that time. There is no reasonable chance of success based on this ground of appeal.

CONCLUSION

[13] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	A. M., self-represented
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