



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CA v Minister of Employment and Social Development*, 2018 SST 1429

Tribunal File Number: AD-18-368

BETWEEN:

C. A.

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 granted.

OVERVIEW

[2] C. A. (Claimant) completed high school and some work-related courses. She worked in a number of jobs, including as a letter carrier. She last worked as an oil field worker. She was laid off from this job and not cleared medically to return because of a knee and leg condition. The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by this condition, sleep apnea, and a thyroid condition. The Minister of Employment and Social Development refused the application.

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal because the Claimant did not present any medical evidence about her condition at the time of the minimum qualifying period (MQP), the date by which a claimant must be found to be disabled to receive the disability pension. Leave to appeal this decision to the Tribunal's Appeal Division is granted because the General Division may have erred in law.

ISSUES

[4] Does the appeal have a reasonable chance of success because the Claimant presents new evidence to support her case?

[5] Does the appeal have a reasonable chance of success on the basis that the General Division erred in law when it required medical evidence for the time of the MQP?

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 Appeal Division 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 The Claimant's arguments to be granted leave to appeal must be considered in this context.

Issue 1: Additional evidence

[7] The Claimant argues that leave to appeal should be granted because she has additional evidence to present that she was not able to obtain before the General Division hearing. The presentation of new evidence is not a ground of appeal set out in the DESD Act, and new evidence is not ordinarily permitted on appeal.³ The evidence that the Claimant seeks to present does not fall into any of the exceptions to the rule that new evidence is not permitted on appeal. Therefore, the appeal has no reasonable chance of success on this basis.

Issue 2: Error in law

[8] The General Division correctly states that a disability pension claimant must prove that they have a disability that is both severe and prolonged under the *Canada Pension Plan*.⁴ It also states that a claimant must provide some objective medical evidence of their disability.⁵ The General Division decision states that the medical evidence must relate to the date of the MQP and continuously thereafter.⁶ It based its decision that the Claimant was not disabled, at least in part, on her failure to provide medical evidence of a disabling condition at the MQP.

[9] However, the courts do not require that medical evidence relate directly to a claimant's condition at the MQP and thereafter. As a result, the General Division may have erred in law, and this requires intervention by the Appeal Division.

CONCLUSION

[10] Leave to appeal is granted.

¹ DESD Act, s 58(1).

² DESD Act, s 58(2).

³ *Canada (Attorney General) v O'Keefe*, 2016 FC 503.

⁴ General Division decision at para 22.

⁵ *Warren v Canada (Attorney General)*, 2008 FCA 377.

⁶ General Division decision at para 25.

[11] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	C. A., self-represented
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