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

Citation: *P. G. v. Minister of Employment and Social Development*, 2018 SST 1264

Tribunal File Number: AD-18-772

BETWEEN:

P. G.

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: December 3, 2018

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] P. G. (Claimant) completed high school and training as an Executive Office Assistant. She worked at several different jobs, many of which were physically demanding. She has Parkinson's disease, anxiety, and depression. The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by her conditions.

[3] The Minister of Employment and Social Development (Minister) refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal, concluding that the Claimant did not have a severe disability at the minimum qualifying period (MQP), which is the date by which a claimant must be found to be disabled to receive the disability pension. Leave to appeal is refused because the General Division considered all of the evidence that was before it; it considered whether the Claimant's employers were benevolent and whether her work after the MQP was substantially gainful.

ISSUES

[4] Was the application for leave to appeal filed late, and, if so, should time to file the application be extended?

[5] Does the appeal have a reasonable chance of success on at least one of the following grounds of appeal?

a) The General Division should have weighed the medical evidence differently.

b) The Claimant wishes to present additional evidence.

c) The Claimant's employers after the MQP were benevolent employers, or her jobs were failed work attempts.

d) The Claimant's earnings are only one thing to be considered in deciding if work is a substantially gainful occupation.

e) The Tribunal should have obtained further medical evidence.

ANALYSIS

Issue 1: Is the application late?

[6] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It states that an application for leave to appeal must be made within 90 days of when the General Division decision is communicated to the claimant.[1] The Appeal Division can extend the time to make an application.[2] The General Division decision was communicated to the Claimant on August 1, 2018.[3] In the leave to appeal documents, the Claimant explains that the paperwork was prepared and taken to Service Canada on October 29, 2018, which was within the timeline to file them. Service Canada sent the documents to another office, which returned them to the Claimant. When she received the application documents back, the Claimant immediately filed them with the Tribunal.

[7] The application for leave to appeal was filed with the Tribunal on November 20, 2018. This is only shortly after the deadline to file the documents. The Claimant has a reasonable explanation for her delay in filing the documents, and her actions demonstrate that she had a continuing intention to appeal. There would be no prejudice to the Minister if the matter were to proceed. It is in the interest of justice to extend the time to file the application for leave to appeal.

[8] Therefore, although the application for leave to appeal was filed late, the time to file the application for leave to appeal is extended.

Issue 2: Does the appeal have a reasonable chance of success?

[9] The DESD Act 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

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[1] DESD Act, s 57(1)
[2] *Ibid*., s 57(2)
[3] AD1-4

made in a perverse or capricious manner or without regard for the material before it.[4] In addition, leave to appeal is refused if the appeal has no reasonable chance of success.[5] The Claimant's grounds of appeal are considered below in this context.

a) Weighing the evidence

[10] The Claimant argues that the General Division erred because it should have placed greater weight on her testimony and less weight on the medical evidence. However, it is for the General Division to receive the parties' evidence and weigh it to make a decision. It is not for the Appeal Division to reweigh the evidence to reach a different conclusion.[6] The appeal does not have a reasonable chance of success on this basis.

b) Additional evidence

[11] The Claimant's representative also submits that he will file further evidence, including medical reports, once he has met with the Claimant. The presentation of new evidence is not a ground of appeal under the DESD Act. Leave to appeal cannot be granted on the basis of a promise to present additional evidence.

c) Benevolent employers or failed work attempts

[12] In addition, the Claimant submits that the General Division erred because it failed to consider that her employers were benevolent employers. The Federal Court of Appeal teaches that a claimant may be found to be disabled in spite of employment if they work for a benevolent employer.[7] It teaches that an employer is benevolent if they offer accommodations to a claimant that goes beyond what is required in the commercial marketplace. This is correctly set out in the General Division decision.[8] The General Division considered the Claimant's earnings and the terms of her employment, including the fact that her husband was a manager at some of her jobs and that she required breaks to rest. Based on all of the evidence, the General Division concluded

[4] DESD Act, s 58(1)
[5] DESD Act, s 58(2)
[6] *Simpson v Canada (Attorney General)*, 2012 FCA 82
[7] *Atkinson v Canada (Attorney General)*, 2014 FCA 187
[8] General Division decision para 29

that the Claimant's employers were not benevolent employers. The appeal has no reasonable chance of success on the basis that it failed to consider this legal principle.

[13] Similarly, the General Division did not fail to consider whether the Claimant's work after the MQP consisted of failed work attempts. The decision sets out when she worked after the MQP, what she earned each year, and the terms of her employment. It concluded that this was substantially gainful employment.[9] It could not have reached this conclusion if the Claimant's jobs were failed work attempts. The appeal has no reasonable chance of success on this basis.

d) Claimant's earnings

[14] The General Division considered what the Claimant earned from employment after the MQP.[10] The Claimant correctly argues that her income does not determine whether her work was a substantially gainful occupation. However, as set out above, the General Division considered other aspects of her work in making its decision. Leave to appeal cannot be granted on the basis of this ground of appeal.

e) Further medical evidence

[15] Finally, the Claimant contends that the General Division should have taken steps to obtain further medical evidence. However, it is for the parties to the appeal to gather and present their evidence to the Tribunal. As an independent decision-maker, it is not for the Tribunal to obtain or request additional evidence from any party. Leave to appeal cannot be granted on the basis of this ground of appeal.

[9] General Division decision para 31–32
[10] *Ibid.* para 16

CONCLUSION

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

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	B. F., for the Applicant