



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. H. v Minister of Employment and Social Development*, 2018 SST 1306

Tribunal File Number: AD-18-728

BETWEEN:

M. H.

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 27, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] M. H. (Claimant) worked for a number of years after she completed Grade 10. She last worked as a cook in a seniors' complex. The Claimant has ongoing back pain, and she stopped working because of this in 2016. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by this condition.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal, finding that the Claimant did not have a severe disability on or before the date of the hearing. Leave to appeal from this decision is refused because the Claimant has not presented a ground of appeal under the *Department of Employment and Social Development Act* (DESD Act) upon which the appeal has a reasonable chance of success.

ISSUES

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

[5] If time to file the application is extended, has the Claimant presented a ground of appeal upon which the appeal has a reasonable chance of success?

ANALYSIS

Issue 1: Is the application for leave to appeal late, and, if so, should time be extended?

[6] The DESD Act governs the Tribunal's operation. It states that an application for leave to appeal to the Tribunal's Appeal Division must be made within 90 days of the General Division decision being communicated to the Claimant.¹ The Appeal Division may extend this time.² The

¹ DESD Act, s 57(1)

General Division decision is dated August 1, 2018. The Claimant filed an incomplete application for leave to appeal on October 31, 2018. This was within the time permitted. The application did not refer to any grounds of appeal under the DESD Act. So the Tribunal wrote to the Claimant twice requesting that she provide grounds of appeal under the DESD Act. The Claimant responded to each request. She filed these responses with the Tribunal more than 90 days after the General Division decision was communicated to her.

[7] An appeal to the Appeal Division is not made until all of the required information is received. Therefore, because the Claimant filed grounds of appeal more than 90 days after the General Division decision was communicated to her, the application was late. However, the Claimant filed most of what was required before this deadline and responded promptly to the written requests from the Tribunal. It is clear that she had an explanation for her delay and a continuing intention to apply. The Minister did not suggest that it would be prejudiced in any way if this appeal were to proceed. It is therefore in the interests of justice to extend the time for the application for leave to appeal.

Issue 2: Has the Claimant presented a ground of appeal that has a reasonable chance of success?

[8] The only grounds of appeal available under the DESD Act 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 made in a perverse or capricious manner or without regard for the material before it.³ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.⁴ Therefore, the Claimant must present a ground of appeal that falls under the DESD Act and upon which the appeal has a reasonable chance of success for leave to appeal to be granted.

[9] In the application for leave to appeal, the Claimant wrote that she continues to have back pain, that she takes medication for depression, and that she has other medical symptoms. She also referred to her dire financial situation. These statements do not point to any error made by the General Division. In her responses to the letters from the Tribunal that asked for clarification

² DESD Act, s 57(2)

³ *Ibid.*, s 58(1)

⁴ *Ibid.*, s 58(2)

of her grounds of appeal, the Claimant repeated this information. I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. The General Division summarized the medical evidence that was before it, including the Claimant's doctor's report that diagnosed disc bulges and mild degenerative disc disease, reported that the Claimant was using conservative treatment, and made recommendations for treatment with physiotherapy and lifestyle changes. The General Division also noted that there was no evidence that the Claimant attended for physiotherapy.⁵

[10] The General Division considered the evidence when it made its decision, finding that the medical evidence did not preclude the Claimant from returning to work.⁶ The General Division also correctly stated that the Federal Court of Appeal teaches that, where there is evidence of work capacity, a claimant must show that efforts of obtaining and maintaining employment have been unsuccessful because of their health condition.⁷ Based on the evidence, the General Division concluded that the Claimant had not met this obligation. The General Division made no errors in law.

[11] There is no indication that the General Division failed to observe a principle of natural justice or erred regarding its jurisdiction.

CONCLUSION

[12] Time to file the application for leave to appeal is extended.

⁵ General Division decision at para 9

⁶ *Ibid.* at para 15

⁷ *Ibid.* at para 18

[13] Leave to appeal is refused because the Claimant did not present a ground of appeal under the DESD Act upon which the appeal has a reasonable chance of success.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	M. H., self-represented
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