



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. K. v Minister of Employment and Social Development*, 2019 SST 5

Tribunal File Number: AD-18-835

BETWEEN:

S. K.

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: January 7, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] S. K. (Claimant) worked for many years as a truck driver. He had a heart attack in 2014, underwent surgery, and returned to work. The Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled by his ongoing heart condition, leg pain and other conditions. The Minister of Employment and Social Development refused the application.

[3] The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division dismissed the appeal on the basis that the Claimant did not have a severe disability. The Claimant's application for leave to appeal to the Tribunal's Appeal Division is refused because the General Division did not base its decision on any erroneous findings of fact regarding his ability to maintain employment.

ISSUE

[4] Is there a reasonable chance of success on appeal because the General Division based its decision on an erroneous finding of fact without considering that the Claimant was unable to maintain employment?

ANALYSIS

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three narrow 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 made in a perverse or capricious manner or without regard for the material before it.¹ In

¹ DESD Act s 58(1).

addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.² The Claimant's grounds of appeal are considered in this context.

[6] The Claimant argues that the General Division failed to consider that, although he held a number of jobs after his heart attack, he did not remain at any single job for any significant length of time, which demonstrates that he was incapable regularly of pursuing any substantially gainful occupation. He asserts that the General Division failed to consider this.

[7] However, the General Division considered the evidence, both oral and written, that was before it. This included evidence that the Claimant continued to look for work after the heart attack in 2014, that he worked full-time as a truck driver/swamper from June 2015 until May 2016 when the truck was sold,³ and that he then worked at different truck driving and other jobs.⁴ The Claimant testified that he had a job interview after the General Division hearing.⁵ In addition, the General Division considered the medical evidence from the Claimant's family doctor and cardiologist, who both stated that the Claimant did not have any ongoing functional limitations.⁶ The General Division did not overlook or misconstrue any important information.

[8] After considering all of the evidence, the General Division concluded that the Claimant retains capacity to work, although perhaps not in a heavy labour position or as a truck driver for 12 to 16 hours each day.⁷ The Claimant's disagreement with this conclusion is not a ground of appeal under the DESD Act. There is no reasonable chance of success on appeal based on an argument that the General Division failed to consider whether he could maintain employment.

[9] In the application to the Appeal Division, the Claimant also states that he has leg pain and walks with a visible limp. This information was before the General Division. The repetition of evidence is not a ground appeal under the DESD Act, so the appeal has no reasonable chance of success on this basis.

² DESD Act s 58(2).

³ General Division decision para 15.

⁴ *Ibid.* paras 15 and 16.

⁵ *Ibid.* para 16.

⁶ *Ibid.* para 9.

⁷ *Ibid.* para 17.

CONCLUSION

[10] Leave to appeal is refused for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	S. K., self-represented
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