



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. H. v Minister of Employment and Social Development*, 2019 SST 97

Tribunal File Numbers: AD-18-422  
AD-19-81

BETWEEN:

**P. H.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: February 8, 2019

## DECISION AND REASONS

### DECISION

[1] The Applicant, P. H., has requested leave to appeal (LTA) two decisions of the Social Security Tribunal's General Division. I am refusing both requests.

### OVERVIEW

[2] The Applicant is a high school graduate who worked for many years as a grocery store manager. She is now 37 years old. She claims that she became a target of harassment at work and was constructively dismissed from her job. In March 2015, she took stress leave and has not worked since.

[3] In February 2016, the Applicant applied for a disability pension under the *Canada Pension Plan (CPP)*, claiming that she could no longer work because of depression, anxiety, and attention deficit and hyperactivity disorder. The Respondent, the Minister of Employment and Social Development (Minister), refused the application because it found that the Applicant's disability was not "severe and prolonged," as defined by the CPP, during the minimum qualifying period (MQP), which it determined would end on December 31, 2017.

[4] The Applicant appealed the Minister's decision to the General Division. The General Division conducted a hearing by teleconference and, in a decision dated March 20, 2018, found that the Applicant had not provided enough evidence that she was incapable regularly of performing substantially gainful work as of the MQP and continuously afterward. The General Division acknowledged that the Applicant had mental health issues but found that they did not prevent her from all types of work.

[5] On June 26, 2018, the Applicant submitted an application to rescind or amend<sup>1</sup> the General Division's decision, submitting new information that she argued was not reasonably discoverable at the time of hearing. At the same time, the Applicant also filed an application for leave to appeal from the Tribunal's Appeal Division alleging that the General Division

---

<sup>1</sup> Cancel or change.

committed various errors in its decision to deny her a disability pension. This first LTA application was placed in abeyance<sup>2</sup> pending the outcome of the rescind or amend proceeding.

[6] In a decision dated November 11, 2018, the General Division granted the Applicant's rescind or amend application and, having accepted into evidence two updated reports from her psychiatrist,<sup>3</sup> decided that the Applicant did have a severe and prolonged disability after all. The General Division determined that the date of onset of the Applicant's disability was August 2017, when her psychiatrist placed her on a six-month sick leave that he decided should be indefinite. The General Division ordered the Minister to pay the Applicant a Canada Pension Plan disability pension as of December 2017, in accordance with section 69 of the CPP.

[7] Although the Applicant was granted a disability pension, she did not want to withdraw her LTA application. In a faxed letter dated January 16, 2019, the Applicant wrote that she disagreed with the General Division's assessment of when her disability pension payments should commence. She noted that she had been receiving treatment for her conditions since 2012, and she argued that she became disabled, according to CPP criteria, in March 2015, when she stopped working for good.

[8] I have determined that the Applicant's letter is, essentially, a second application requesting leave to appeal—this one directed to the General Division's November 2018 decision. Since the first and second LTA applications address the same set of facts and share common questions of law, I think it is appropriate to deal with them together, as allowed under section 13 of the *Social Security Tribunal Regulations*. In taking this action, I am satisfied that the Applicant's interests will not be prejudiced.

[9] Having reviewed the Applicant's submissions against the record, I have concluded that neither LTA application has a reasonable chance of success on appeal.

---

<sup>2</sup> Placed on hold.

<sup>3</sup> Letters by Dr. Salim Hamid dated June 18, 2018 (RA1-23) and September 24, 2018 (RA3-5).

## ISSUES

[10] According to section 58 of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: the General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) 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. An appeal may be brought only if the Appeal Division grants leave to appeal,<sup>4</sup> but the Appeal Division must first be satisfied that the appeal has a reasonable chance of success.<sup>5</sup> The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.<sup>6</sup>

[11] I must decide the following questions:

Issue 1: Is there a reasonable chance of success on appeal for the first LTA application when its target—the General Division’s March 20, 2018, decision—has been rescinded or amended?

Issue 2: Is there a reasonable chance of success on appeal for the second LTA application, which argues that the General Division erred when it found in its November 11, 2018, decision that the Applicant did not become disabled until August 2017?

## ANALYSIS

### **Issue 1: Is there a reasonable chance of success on appeal for the first LTA application?**

[12] One question that occurs to me as I consider these applications is whether the General Division’s first decision—denying the Applicant a Canada Pension Plan disability pension—still exists and whether it can be the subject of an appeal. Section 66(1)(b) of the DESDA allows the General Division to “rescind **or** amend” (emphasis added) one of its decisions if a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence. This provision does not make a distinction between rescinding a

---

<sup>4</sup> DESDA, ss 56(1) and 58(3).

<sup>5</sup> *Ibid.*, s 58(2).

<sup>6</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

decision and amending it, and neither did the General Division in its November 11, 2018, decision: in its conclusion, it simply declared, “The Application to Rescind or Amend is allowed.”<sup>7</sup>

[13] If the General Division’s March 20, 2018, decision was rescinded, it no longer exists in legal terms, and it therefore cannot serve as the basis for an appeal. The Applicant’s first LTA application would be voided along with the decision.

[14] If the March 20, 2018, decision was amended, then it still exists and so does the Applicant’s first LTA application, even if its rationale has been undermined by the wholesale revision of the General Division’s reasoning. That may have been what happened here. If the General Division’s November 11, 2018, decision did not rescind its March 20, 2018, decision, it certainly amended it to the point where it became nearly unrecognizable. In effect, the General Division issued a new decision, incorporating not just new information, but also the evidence that was already on the record, to arrive at a new result—opposite to what it had decided six months earlier.

[15] The first LTA application was entirely concerned with demonstrating that the General Division had erred when it found that the Applicant did not have a severe and prolonged disability as of the MQP. When that outcome was reversed, the basis for the first LTA application collapsed. I see no arguable case for any of the submissions in it, simply because the Applicant received most of what she had been seeking.

**Issue 2: Is there a reasonable chance of success on appeal for the second LTA application?**

[16] The Applicant largely succeeded in her application to rescind or amend the General Division’s March 20, 2018, decision, but she disagreed with its finding that the date of onset of her disability was August 2017, the month in which Dr. Hamid recommended temporary—later indefinite—leave from work.

[17] The Applicant insists that she became disabled earlier, pointing to the evidence that she had been diagnosed with depression and other psychological disorders in 2013 and has received

---

<sup>7</sup> General Division decision dated November 11, 2018, para 36.

treatment for them since then. However, this evidence was on the record when the General Division considered the Applicant's disability claim, and I see nothing in its decision to indicate that it disregarded her medical history.

[18] It is settled law that an administrative tribunal charged with finding fact is presumed to have considered all the evidence before it.<sup>8</sup> In this case, having heard testimony and reviewed the medical file, the General Division changed its mind about the Applicant's disability once it saw that Dr. Hamid no longer believed her impairments to be temporary. It seems to me that this was a rational basis on which to establish the date of onset. In the absence of a factual error that was perverse, capricious, or made without regard for the record, I see no reason to interfere with the General Division's finding that the Applicant's disability became severe and prolonged as of August 2017.

**CONCLUSION**

[19] Since the Applicant has not identified any grounds of appeal under section 58(1) of the DESDA that would have a reasonable chance of success on appeal, her applications for leave to appeal are refused.



Member, Appeal Division

REPRESENTATIVE:	P. H., self-represented
-----------------	-------------------------

---

<sup>8</sup> *Simpson v Canada (Attorney General)*, 2012 FCA 82.