



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. S. v Minister of Employment and Social Development*, 2019 SST 131

Tribunal File Number: AD-19-99

BETWEEN:

L. S.

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: February 14, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] L. S. (Claimant) worked in a number of different jobs, leaving each employer because of a work injury or because the employer had no more hours for her. She had a number of work injuries. She also returned to school and completed Grade 12 and most courses in an administrative program after being injured at work. The Claimant last worked and contributed to the Canada Pension Plan in 2015. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by her numerous work injuries and mental illness.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal held a teleconference hearing and dismissed the appeal, finding that the Claimant did not have a severe disability under the *Canada Pension Plan*. Leave to appeal is refused because the General Division did not base its decision on an erroneous finding of fact regarding her health and did not err in law.

ISSUES

[4] Is there a reasonable chance of success on appeal because the General Division made any of the following errors:

- a) The General Division dismissed her claim to reduce a backlog of cases;
- b) The appeal should have been considered by a three-member panel, not a single decision-maker;
- c) Medical personnel did not review the medical evidence;
- d) There should be a parliamentary investigation into failings of the Canada Pension Plan disability program.

[5] Does the appeal have a reasonable chance of success because the General Division based its decision on at least one of the following erroneous findings of fact?

- a) The General Division found that completing further education demonstrated a capacity to work;
- b) The General Division failed to consider the impact of the Claimant's mental illness on her capacity to work.

[6] Did the General Division make an error in law when it failed to consider the following?

- a) The Claimant continued to work only because of her financial circumstances;
- b) There are other definitions of "disabled."

ANALYSIS

[7] The Tribunal was created under the *Department of Employment and Social Development Act* (DESD Act). As such, it has only the legal authority granted to it in the legislation. The DESD Act sets out only three narrow 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 made in a perverse or capricious manner or without regard for the material before it.¹ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.² Therefore, to be granted leave to appeal, the Claimant must present a ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success.

Issue 1: Grounds of appeal outside the Tribunal's authority

[8] The Claimant presents a number of grounds of appeal. However, leave to appeal can be granted based only on a ground of appeal that is set out in the DESD Act. Some of the Claimant's grounds of appeal do not fall under the DESD Act, so leave to appeal cannot be granted based on them.

¹ DESD Act, s 58(1).

² DESD Act, s 58(2).

[9] First, the Claimant argues that the General Division dismissed her appeal to reduce a backlog of cases. She did not point to any statement the General Division member made or to any document that supports this claim. At this time, there is no backlog of cases at the Tribunal. Even if the Claimant's argument were true, this is not a ground of appeal set out in the DESD Act.

[10] Second, the Claimant argues that the General Division dismissed her appeal because a medical professional did not review the evidence and the hearing was held by a single decision-maker, not a panel of three, which was the practice at the Office of the Commissioner of Review Tribunals (which was replaced by this Tribunal). However, the General Division has no authority over its composition, and the DESD Act specifies that hearings are to be heard by a single member.³ These arguments do not point to any error by the General Division.

[11] Finally, the Claimant argues that there should be a parliamentary investigation into the failings of the Canada Pension Plan disability program. The Tribunal has no authority to direct that such an inquiry take place. This argument also does not point to any error by the General Division.

Issue 2: Erroneous findings of fact

[12] The Claimant also argues that the General Division erred because it based its decision on erroneous findings of fact. To succeed on appeal on this basis, the Claimant must establish three things: that a finding of fact was erroneous; that it was made perversely, capriciously, or without regard for the material that was before the General Division; and that the decision was based on the finding of fact. The Claimant's arguments are considered below.

[13] The first finding of fact that the Claimant calls into question is that her attendance at educational programs demonstrates capacity to work.⁴ The General Division considered all of the evidence before it, including the fact that the Claimant returned to school in 2011 to complete Grade 12. Despite an injury, she graduated with honours and completed additional courses in administrative studies. Her attendance at these courses was good, and she did not require any

³ DESD Act, s 61.

⁴ General Division decision at para 19.

accommodations.⁵ The Pension Appeals Board (the predecessor to the Appeal Division) teaches that attendance at school and studying can demonstrate capacity to work.⁶ Therefore, the General Division properly considered the Claimant's retraining. There is an evidentiary basis to conclude that this, along with the other evidence, demonstrated that the Claimant had some capacity to work, so the Claimant's argument does not point to an erroneous finding of fact. The appeal does not have a reasonable chance of success on this basis.

[14] The Claimant also argues that the General Division based its decision on an erroneous finding of fact because it failed to consider the impact of her mental illness on her capacity regularly to pursue any substantially gainful occupation. However, the General Division specifically considered that the Claimant was prescribed medication for depression, did not require ongoing treatment from any mental health professional, and was able to complete her educational upgrading despite this condition.⁷ Therefore, the appeal does not have a reasonable chance of success based on this argument.

Issue 3: Error in law

[15] The Claimant argues, in addition, that the General Division erred because it failed to consider that she continued to work only because of her dire financial circumstances. However, the Federal Court of Appeal teaches that socio-economic factors are irrelevant when deciding whether a claimant is disabled.⁸ Therefore, the General Division made no error by failing to consider this, and leave to appeal cannot be granted on this basis.

[16] Finally, the Claimant contends that the General Division should have considered that the term "disabled" means different things in other contexts. While that may be so, the General Division had to consider whether the Claimant was disabled under the *Canada Pension Plan*. The decision correctly sets out that, under the *Canada Pension Plan*, a person is considered to have a severe disability if they are incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration

⁵ General Division decision at para 25.

⁶ *Stratton v Minister of Social Development*, CP 24370.

⁷ General Division decision at para 13.

⁸ *Canada (Minister of Human Resources Development) v Rice*, 2002 FCA 47.

or is likely to result in death.⁹ The General Division applied this test to the facts before it, which the Claimant does not dispute. Therefore, the appeal does not have a reasonable chance of success on this basis.

CONCLUSION

[17] Leave to appeal is refused because the Claimant has not presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	L. S., self-represented
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⁹ General Division decision at para 6.