



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. D. v Minister of Employment and Social Development*, 2019 SST 152

Tribunal File Number: AD-19-40

BETWEEN:

P. D.

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 21, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] P. D. (Claimant) has a post-secondary education and many years of work experience. She stopped working as a social worker in 2003. She was granted a Canada Pension Plan disability pension starting in January 2004 because she was found to be disabled by depression and back pain. The Claimant returned to work in 2014 providing caregiving and home care services.

[3] The Minister of Employment and Social Development investigated and, in April 2017, decided that the Claimant ceased to be disabled under the *Canada Pension Plan* in June 2014. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal, finding that the Claimant ceased to be disabled in 2014 because she has worked as a personal support worker since that time. Leave to appeal this decision to the Tribunal's Appeal Division is refused because the General Division did not base its decision on any erroneous findings of fact.

ISSUE

[4] Does the appeal have a reasonable chance of success because the General Division based its decision on an erroneous finding of fact that the Claimant was capable regularly of pursuing any substantially gainful occupation?

ANALYSIS

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three 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

¹ DESD Act, s 58(1).

addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.² So, 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.

[6] The Claimant argues that the General Division erred because it based its decision on her earnings rather than her limitations, including the fact that she had to rest while working and that she worked only because of her financial distress. The appeal does not have a reasonable chance of success on this basis. The General Division decision summarized the evidence before it. I have reviewed the written record and the General Division decision. The General Division did not misstate or overlook any important information. The evidence before the General Division includes that the Claimant worked from 2014 to 2018 as a personal support worker for different people. Although she worked in different environments, she changed her work positions for reasons unrelated to her health. These reasons included the fact that her patients moved to a residence and no longer required her care and she needed to earn greater income. Although she received some assistance with some of her duties, the Claimant was able to complete her work tasks.

[7] The legal test for a severe disability is whether a claimant is regularly incapable of pursuing any substantially gainful occupation. To determine whether an occupation is substantially gainful requires a decision-maker to consider the income that the claimant earned. Therefore, the General Division did not err in doing so. It also considered the Claimant's hours of work and her other work conditions. Leave to appeal cannot be granted on the basis that the General Division considered the Claimant's income.

[8] In her leave to appeal application, the Claimant also repeated some of her evidence regarding her working conditions, including that she had to take breaks and that her employer was unaware of this. However, presenting evidence is not a ground of appeal under the DESD Act. Leave to appeal cannot be granted on the basis of new or additional evidence.

[9] Finally, the Claimant argues that she would have been entitled to try to work in a vocational rehabilitation program but did not do so because of her age. The General Division did not examine whether the Claimant's work was part of such a program or could be considered so.

² DESD Act, s 58(2).

However, the failure to consider a vocational rehabilitation program does not point to an error by the General Division. The General Division had to consider and decide whether the Claimant had a severe and prolonged disability under the *Canada Pension Plan*, not in terms of a vocational rehabilitation program. Therefore, this argument also does not point to any error made under the DESD Act, and leave to appeal cannot be granted on this basis.

CONCLUSION

[10] The Claimant has not presented a ground of appeal under the DESD Act on which the appeal has a reasonable chance of success. Therefore, leave to appeal must be refused.

Valerie Hazlett Parker
Member, Appeal Division

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| REPRESENTATIVE: | P. D., self-represented |
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