Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *L. P. v Minister of Employment and Social Development*, 2019 SST 147

Tribunal File Number: AD-19-54

BETWEEN:

L. P.

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 20, 2019

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, L. P., is from the Philippines and came to Canada on a work permit in 2005. She is now 52 years old. She is a high school graduate and has training in X and in X. She was most recently employed as an X, a job that ended in November 2011. She claims that, after she was diagnosed with schizophrenia, her employer stopped giving her hours.

[3] In May 2016, the Applicant applied for a disability pension under the *Canada Pension Plan* (CPP), claiming that she could no longer work because her judgment was impaired and she could no longer control her impulses. The Respondent, the Minister of Employment and Social Development (Minister), refused the application because the Applicant had failed to demonstrate that she suffered from a "severe and prolonged" disability as of the minimum qualifying period (MQP), which ended on December 31, 2012.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. The General Division elected not to hold an oral hearing and considered the matter based on the existing documentary record. In a decision dated October 1, 2018, the General Division dismissed the appeal, finding a complete lack of medical evidence from the MQP to support the Applicant's mental health claims.

[5] On January 19, 2019, the Applicant requested leave to appeal from the Appeal Division, alleging that the General Division had erred in rendering its decision. She insisted that she had been diagnosed with paranoid schizophrenia in November 2011 and, after that time, could not have engaged in a regular and substantial real-world occupation. The Applicant also enclosed a psychiatric report, dated November 2018, providing an updated summary of her condition.

[6] Having reviewed the General Division decision against the underlying record, I have concluded that the Applicant has not advanced any grounds that would have a reasonable chance of success on appeal.

ISSUE

[7] According to section 58(1) of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: the General Division failed to observe a principle of natural justice, erred 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. An appeal may be brought only if the Appeal Division first grants leave to appeal.[1] To grant leave to appeal, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[2] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[3]

[8] My task is to decide the following questions: Has the Applicant has put forward any grounds that fall under the categories specified in section 58(1) of the DESDA? If so, do any of them raise an arguable case on appeal?

ANALYSIS

[9] The General Division dismissed the Applicant's appeal because it found no medical evidence from her MQP in support of her claim that she was disabled by mental illness before December 31, 2012. I have reviewed the record that was before the General Division and I can confirm that the earliest medical report on file was a questionnaire, dated April 11, 2016,[4] that Dr. Zarah Cariaga-Espinoza, a psychiatrist in the Philippines, completed in conjunction with the Applicant's application for Canada Pension Plan disability benefits. Dr. Cariaga-Espinoza disclosed that the Applicant had been diagnosed with paranoid schizophrenia, but she also noted that she had been treating the Applicant since February 2015—only a few months after the

[1] DESDA, ss 56(1) and 58(3).
[2] *Ibid*., s 58(1).
[3] *Fancy v Canada (Attorney General)*, 2010 FCA 63.
[4] Medical Report, completed by Dr. Zarah Cariaga-Espinoza, GD2-102.

Applicant was repatriated to the Philippines.[5] It is safe to say that Dr. Cariaga-Espinoza would have had no first-hand knowledge of the Applicant's condition during the period most relevant to her Canada Pension Plan disability claim.

[10] The Applicant insists that she was diagnosed with paranoid schizophrenia in November 2011 and suggests that the General Division was wrong to find otherwise. However, there was no documentary evidence on file to support this claim, and the General Division was within its authority to require more than just the Applicant's word for it.

[11] A trier of fact is presumed to have considered all the material before it and is usually afforded wide discretion in how it assigns weight to the evidence.[6] According to *Warren v Canada*,[7] it is not an error of law to require objective evidence of a disability. This is consistent with earlier judicial pronouncements on this issue, including the leading case of *Villani v Canada*, which stated:

> Claimants still must be able to demonstrate that they suffer from a "serious and prolonged disability" that renders them "incapable regularly of pursuing any substantially gainful occupation." Medical evidence **will still be needed** as will evidence of employment efforts and possibilities [emphasis added].[8]

In this case, the record shows that the Minister specifically asked the Applicant to provide medical documentation from the period before December 31, 2012. She did not do so. As trier of fact, the General Division was entitled to draw a rational inference from an absence of objective medical evidence.

[12] The Applicant enclosed with her leave to appeal application an update that Dr. Cariaga-Espinoza prepared after the General Division released its decision. I am unable to consider this document because the DESDA does not allow the Appeal Division to admit new evidence or hear arguments on the merits of disability. Once a hearing is concluded, there is a

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[5] As noted by Dr. Cariaga-Espinoza in her letter of January 18, 2017, GD2-86.
[6] *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[7] *Warren v Canada (Attorney General)*, 2008 FCA 377.
[8] *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 50.

very limited basis on which any new or additional information can be raised, although a claimant does have the option of making an application to the General Division to rescind or amend its decision.[9]

[13] In the end, the Applicant's submissions amount to a plea for the Appeal Division to reconsider the evidence and decide in her favour. Unfortunately, I am unable to do so because my authority allows me to determine only whether any of the Applicant's reasons for appealing fall within the three grounds permitted under section 58(1) of the DESDA and whether any of them have a reasonable chance of success. It is not sufficient for a claimant to merely state their disagreement with the General Division's decision, nor is it enough to express their continued conviction that their health conditions render them disabled within the meaning of the CPP.

CONCLUSION

[14] Since the Applicant has not identified any grounds of appeal that would have a reasonable chance of success on appeal, the application for leave to appeal must be refused.

Member, Appeal Division

REPRESENTATIVE:	L. P. , self-represented

[9] A claimant seeking to rescind or amend a decision of the General Division must comply with the requirements set out in s 66 of the DESDA and ss 45 and 46 of the *Social Security Tribunal Regulations*, which impose strict deadlines and require an applicant to demonstrate that any new facts are material and could not have been discovered at the time of the hearing without exercise of reasonable diligence.