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

Citation: *A. P. v Minister of Employment and Social Development*, 2019 SST 205

Tribunal File Number: AD-19-129

BETWEEN:

A. 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: March 14, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, A. P., has a Grade 10 education and is now 60 years old. In the early 1990s, he injured his back while working at a warehouse and was retrained as an X. He recovered and eventually returned to his job but reinjured his back in 2003. He did not work again until 2009, when he took another warehouse job. This time, he lasted three months, injuring his back yet again while attempting to lift a heavy drum. He has not worked, or looked for work, since then.

[3] In August 2017, the Applicant applied for a disability pension under the *Canada Pension Plan* (CPP), claiming that he could no longer work because of back pain. The Respondent, the Minister of Employment and Social Development (Minister), refused the application because the Applicant had failed to demonstrate that he suffered from a "severe and prolonged" disability as of the minimum qualifying period (MQP), which it determined had ended on December 31, 2006.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. The General Division held a hearing by teleconference and, in a decision dated January 18, 2019, dismissed the Applicant's claim. It found that he was, more likely than not, able to perform substantially gainful work during the MQP. The General Division acknowledged that the Applicant had back injuries but found that he had made insufficient effort to obtain alternative employment that would have been better suited to his limitations.

[5] On February 20, 2019, the Applicant requested leave to appeal from the Appeal Division, alleging that the General Division had erred in rendering its decision. The Applicant insisted that his physical and psychological impairments were both severe and prolonged, rendering him unemployable in any capacity. The Applicant also argued that the General Division failed to give

sufficient weight to the medical evidence on file from his primary treatment providers, notably Dr. Murti, Dr. Roscoe, and Dr. Prutis.

[6] Having reviewed the General Division's 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 determine whether the Applicant has identified any grounds that fall under the categories specified in section 58(1) of the DESDA and, if so, whether any of them raise an arguable case on appeal.

ANALYSIS

[9] In my view, the Applicant has not put forward an arguable case. His submissions do little more than summarize his medical conditions, which include degenerative disc disease, chronic pain, and depression, and their associated symptoms, which include restricted movement, disrupted sleep, and low mood. However, merely repeating the evidence does not demonstrate that the General Division committed an error. Ultimately, the Applicant's submissions amount to a plea for the Appeal Division to reconsider the evidence and decide in his favour. Unfortunately, I am unable to do so because my authority allows me to determine only whether

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[1] DESDA, ss 56(1) and 58(3).
[2] *Ibid*., s 58(2).
[3] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

any of the Applicant's reasons for appealing fall within the three grounds listed in section 58(1) of the DESDA and whether any of them have a reasonable chance of success. It is not enough 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.

[10] The Applicant also argues that the General Division assigned insufficient weight to evidence from selected treating physicians. I do not see an arguable case on this point either. While the Applicant may not agree with its conclusions, the General Division was within its authority to assess the available evidence as it saw fit. In *Simpson v Canada*,[4] the Federal Court of Appeal stated the following:

> [A]ssigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact.

In the Applicant's case, the General Division made its decision after conducting what appears to be a reasonably comprehensive survey of the evidentiary record. Contrary to the Applicant's submissions, it did not ignore evidence from Dr. Murti, Dr. Roscoe, or Dr. Prutis, whose reports were mentioned numerous times in its decision:

- In subparagraphs 5(a), (b), (c), (d), and (h), the General Division summarized Dr. Murti's reports dated, respectively, November 19, 1999, February 5, 2000, July 29, 2000, January 10, 2001, and March 4, 2003;
- In subparagraphs 5(e) and (f), the General Division summarized Dr. Roscoe's reports dated, respectively, March 1, 2001, and April 11, 2001;
- In subparagraph 5(g), the General Division summarized Dr. Prutis's report dated August 28, 2003.

[4] *Simpson v Canada (Attorney General)*, 2012 FCA 82.

I note that there were other reports on file from Dr. Prutis,[5] but they were all dated well after the MQP, and the General Division therefore had reason to assign them lesser weight.

[11] Otherwise, the General Division analyzed the Applicant's medical problems—first and foremost back pain—and how they affected his capacity to regularly pursue substantially gainful employment as of December 31, 2006. In doing so, the General Division found that the Applicant did not become severely disabled until his 2009 warehouse injury. It also found that, in repeatedly returning to physically demanding warehouse jobs, the Applicant had not fulfilled his obligation to seek alternative work that was suited to his limitation. I see no indication that the General Division erred in law or inadequately consider any significant component of the evidence before it.

CONCLUSION

[12] 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 is refused.

Member, Appeal Division

REPRESENTATIVE:	Connie Oliverio, Representative for the Applicant

[5] Reports by Dr. Krystyna Prutis dated April 23, 2009 (GD2-50), December 28, 2009 (GD2-180), September 21, 2010 (GD2-91), and March 14, 2018 (GD3-2).