



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. G. v Minister of Employment and Social Development*, 2019 SST 515

Tribunal File Number: AD-19-306

BETWEEN:

N. G.

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: May 28, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, N. G., was born in Egypt and immigrated to Canada in 2011. She worked in a X until July 2017, when she claims back and leg pain made it impossible for her to remain on her feet for extended periods. She has not worked since and is now 45 years old.

[3] In September 2017, the Applicant applied for a Canada Pension Plan (CPP) disability pension, claiming that she could no longer work because of various medical conditions, including degenerative changes to her back and knees, diabetes mellitus, sleep apnea, and chest pain. The Respondent, the Minister of Employment and Social Development (Minister), refused the application because it found that the Applicant had failed to demonstrate a “severe and prolonged” disability during her minimum qualifying period (MQP), which it determined was due to end on December 31, 2019.

[4] The Applicant appealed the Minister’s refusal to the General Division of the Social Security Tribunal. The General Division held a hearing by videoconference and, in a decision dated February 27, 2019, dismissed the Applicant’s claim, finding insufficient medical evidence that she was incapable regularly of performing substantially gainful work as of the hearing date. The General Division also found that the Applicant had not shown “good faith preparedness to follow obviously appropriate medical advice,”¹ nor had she tried to “retrain or embark on alternate, more suitable employment.”²

[5] On April 29, 2019, the Applicant requested leave to appeal from the Appeal Division, alleging that the General Division had erred in reaching its decision. The Applicant said that she had been recently diagnosed with neuralgia parenthetica and insisted that her back and knee pain

¹ General Division decision, para 18.

² General Division decision, para 22.

were both severe and prolonged, making her unemployable in any capacity. The Applicant also took issue with the General Division's finding that she had refused to follow treatment recommendations, noting that she had attended the Wharton Medical Clinic and already lost 14 pounds, as her family doctor had advised. The Applicant added that, in any case, losing weight did not help with her diabetes, heart condition, or high cholesterol. She suggested that the General Division had unfairly drawn a negative inference from her refusal to take up swimming, which she said would not have done her any good anyway. She said that, at the hearing, she had attempted to explain why she could not swim, but the General Division refused to believe that she was afraid of water.

[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.³ To grant leave to appeal, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.⁵

[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.

³ DESDA, ss 56(1) and 58(3).

⁴ *Ibid.*, s 58(1).

⁵ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

ANALYSIS

[9] In my view, the Applicant has not put forward an arguable case. She alleges that the General Division dismissed her appeal despite medical evidence that her overall condition was “severe,” but outside of this broad allegation, she does not identify how, in coming to its decision, the General Division failed to observe a principle of natural justice, committed an error in law, or made an erroneous finding of fact.

[10] My review of the decision indicates that the General Division considered the Applicant’s claimed medical conditions but found that they did not prevent her from regularly pursuing substantially gainful employment. The General Division noted that imaging reports of her knees and back showed mild or minimal degenerative changes. It noted that a sleep study found that her sleep apnea was mild. It noted that her intermittent chest pain was found to be “non-cardiac.” It noted that her diabetes was manageable, provided that she adjust her lifestyle and take insulin. In considering the impact of the Applicant’s health on her employability, the General Division also took into account her background, including her age, education, and fluency in English, but found that none of these factors significantly affected her capacity to perform light work.

[11] The Applicant claimed that she had recently been diagnosed with “neuralgia parenthesis” However, I saw no mention of this condition, or anything resembling it, in the Applicant’s medical file, and I heard nothing about it in my review of the recording of the General Division hearing. As such, the General Division cannot be blamed for failing to consider something that was never put before it in the first place.

[12] The Applicant also complained that the General Division neglected to consider her reasons for not taking up swimming, as her family doctor had advised. Again, I see no arguable case that the General Division erred on this point. In fact, the General Division did consider the Applicant’s water phobia⁶ in its decision, part of a larger discussion about what it found was a larger pattern of failure to follow her treatment providers’ advice:

However, various health professionals have made treatment recommendations that the Claimant has refused to follow. She did not

⁶ The General Division questioned the Applicant about her fear of water at 58:50 of part 1 the audio recording of the hearing.

take physical therapy because she would have had to pay for it herself. I find that this is a reasonable explanation, given that she has no income.

I find her other explanations less reasonable. Exercise is an important aspect of weight loss. The Claimant testified that she can't walk because of her knee condition. Swimming is not an option because she can't swim and is apparently not inclined to learn. She refused knee injections because she was scared of them. She declined weight loss surgery because of a bad episode in 2015 when she had cardiac catheterization. Two doctors have recommended that she take insulin. She refuses to do so because in her culture going on insulin means that the diabetes is moving to a serious level and she doesn't want to worry her children. She testified that she believes it is her fate to suffer from ill health.

I find that the Claimant has failed to show good faith preparedness to follow obviously appropriate medical advice.⁷

This passage indicates that the General Division gave due consideration to the Applicant's explanations for her non-compliance but found them unconvincing. I see no reason to interfere with these findings. While applicants are not required to prove the grounds of appeal at the leave to appeal stage, they must set out some rational basis for their submissions that fall into the established grounds of appeal. Applicants must do more than state their disagreement with General Division decisions or continue to argue that their health conditions make them disabled within the meaning of the CPP.

[13] In the absence of a specific allegation of error, I find the Applicant's reasons for appealing to be so broad that they amount to a request to retry the entire claim. If she is requesting that I reconsider and reassess the evidence and substitute my decision for the General Division's in her favour, I am unable to do this. My authority allows me to determine only whether any of the Applicant's reasons for appealing fall within the specified grounds of section 58(1) and whether any of them have a reasonable chance of success.

[14] The courts have addressed this issue in other cases involving allegations that administrative tribunals failed to consider all of the evidence. In *Simpson v Canada*,⁸ the appellant's counsel identified a number of medical reports that she said that the Pension Appeals

⁷ General Division decision, paras 16-19.

⁸ *Simpson v Canada (Attorney General)*, 2012 FCA 82.

Board ignored, attached too much weight to, misunderstood, or misinterpreted. In dismissing the application for judicial review, the Federal Court of Appeal stated:

[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.

While the Applicant may not agree with the General Division's conclusions, it is open to an administrative tribunal to sift through the relevant facts; assess the quality of the evidence; determine what evidence, if any, it might choose to accept or disregard; and to decide on the weight to give that evidence.

CONCLUSION

[15] 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:	N. G., self-represented
-----------------	-------------------------