



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. D. v Minister of Employment and Social Development*, 2019 SST 1567

Tribunal File Number: AD-18-497

BETWEEN:

G. 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: June 14, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted.

OVERVIEW

[2] G. D. (Claimant) completed Grade 8 before she joined the paid workforce. She last worked as a cashier from August 2015, until April 2016, when she could no longer work because of her medical conditions. The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled because of a number of medical conditions, including almost total blindness in one eye and diabetic foot ulcers that affected her ability to stand and walk. The Minister of Employment and Social Development refused the application because it decided that the Claimant did not have a severe and prolonged disability by the end of the minimum qualifying period (the date by which a claimant must be found to be disabled in order to receive the disability pension).

[3] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It concluded that there was no medical evidence about the Claimant's condition at the minimum qualifying period (MQP),¹ and that the Claimant also claimed that she became disabled after this date.²

[4] Leave to appeal this decision to the Tribunal's Appeal Division is granted because the appeal has a reasonable chance of success on the basis that the General Division made an error in law.

PRELIMINARY MATTER

[5] In the application to the Appeal Division the Claimant requested leave to appeal because she did not understand why the General Division did not grant her the disability pension, and she explained her medical conditions and limitations. The Tribunal wrote to the Claimant and

¹ General Division decision at para. 9

² Ibid. at para. 10

explained what grounds of appeal could be considered. The Claimant responded to this by again summarizing her conditions.

ISSUE

[6] Does the appeal have a reasonable chance of success because the General Division made an error under the DESD Act?

ANALYSIS

[7] The DESD Act governs the Tribunal's operation. Under it, an appeal to the Tribunal's Appeal Division is not a rehearing of a claim. Rather, an appeal decides whether the General Division made an error. The DESD Act sets out only three kinds of errors that can be considered. They are that the General Division failed to observe a principle of natural justice, 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.³ In addition, leave to appeal is to be refused if the appeal has no reasonable chance of success.⁴ Therefore, to be granted leave to appeal there must be at least one ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success.

[8] The Claimant argues that leave to appeal should be granted because she has a number of medical conditions. She continued to work until April 2016 to feed herself and her nephew, and she worked while in constant pain.

[9] I sympathize with the Claimant's circumstances. However, this information was presented to the General Division and considered by it. Its repetition is not a ground of appeal under the DESD Act, so leave to appeal cannot be granted on this basis.

[10] However, the General Division may have made an error in law. The decision states that a claimant must provide some objective medical evidence of her disability, and that the medical evidence must relate to the date of the MQP as well as continuously since.⁵ However, the Federal

³ DESD Act s. 58(1)

⁴ DESD Act s. 58(2)

⁵ General Division decision at para. 9

Court of Appeal teaches that a claimant must provide some objective medical evidence of their disability.⁶ It does not require that this evidence points to the MQP or thereafter. Therefore, the General Division may have erred in law, and the appeal has a reasonable chance of success on this basis.

CONCLUSION

[11] Leave to appeal is therefore granted.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	G. D., Self-represented
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⁶ Warren v. Canada (Attorney General), 2008 FCA 377