



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. E. v Minister of Employment and Social Development*, 2019 SST 591

Tribunal File Number: AD-19-407

BETWEEN:

A. E.

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: June 20, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, A. E., is a former security guard who injured her right knee in a motor vehicle accident. In July 2018, she applied for a Canada Pension Plan (CPP) disability pension, claiming that she could no longer work because of patella femoral syndrome, among other medical conditions. The Respondent, the Minister of Employment and Social Development (Minister), refused the application because it determined that the Applicant did not have coverage—she had not made sufficient contributions to the CPP to establish a minimum qualifying period (MQP).

[3] 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 April 23, 2019, dismissed the appeal, agreeing with the Minister that the Applicant's two years of qualifying contributions were not enough to establish an MQP.

[4] On May 20, 2019, the Applicant requested leave to appeal from the Appeal Division, insisting that she was disabled because of severe and chronic pain in her lower back, right knee, and wrist.

[5] I 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.

ISSUES

[6] 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.

[7] 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] I must decide whether the Applicant has presented an arguable case that falls into one or more of the grounds set out in section 58(1) of the DESDA.

ANALYSIS

[9] I do not see an arguable case that the General Division committed an error.

[10] In order to qualify for the CPP disability pension, a claimant must show valid contributions in at least four calendar years over any six-year period.⁴ In this case, the Applicant's most recent record of earnings and contributions⁵ shows that she had above-threshold earnings and contributions in only two years—2015 and 2016. Since she apparently did not register any earnings or contributions in either 2017 or 2018, she is also blocked from taking advantage of the *Canada Pension Plan*'s proration provision.⁶

[11] An appeal to the Appeal Division is not an occasion to reargue the substance of one's disability claim. The Applicant may not agree with the General Division member's analysis, but he was bound to follow the terms of the *Canada Pension Plan*, and so am I. We cannot simply ignore the law and make decisions that strikes us as fair or reasonable. That power, known as "equity," has traditionally been reserved to the courts, although even they typically exercise it only if the law is not enough to resolve the issue. *Canada v Tucker*,⁷ among many other cases, has confirmed that administrative tribunals, such as the Social Security Tribunal, are not courts

¹ DESDA, ss 56(1) and 58(3).

² *Ibid.*, s 58(1).

³ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁴ *Canada Pension Plan*, section 44(2)(a)(i) .

⁵ Record of Earnings and Contributions, GD3-5.

⁶ *Canada Pension Plan*, section 44(2.1).

⁷ *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

but statutory decision-makers and, therefore, not empowered to provide any form of equitable relief.

CONCLUSION

[12] The Applicant has not introduced any evidence to show that her record of earnings and contributions is inaccurate, nor has she demonstrated how the General Division otherwise acted unfairly or committed factual or legal errors.

[13] The application for leave to appeal is therefore refused.



Member, Appeal Division

REPRESENTATIVE:	A. E., self-represented
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