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

Citation: *L. A. v Minister of Employment and Social Development*, 2019 SST 664

Tribunal File Number: AD-19-449

BETWEEN:

L. A.

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: July 17, 2019

Canada

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, L. A., was born in Fiji and immigrated to Canada in 1985. He began working as an auto body repairman and eventually started his own business. He performed this type of work until 2011, when he developed respiratory issues. In August 2012, he was in a car accident, which left him in leg and back pain. He is now 54 years old.

[3] In January 2017, the Applicant applied for a Canada Pension Plan (CPP) disability pension, claiming that he could no longer work because of breathing problems, liver disease, progressive left leg and hand weakness, and arthritis in his fingers and toes. The Respondent, the Minister of Employment and Social Development (Minister), refused the application because the Applicant had failed to demonstrate that he had a "severe and prolonged" disability as of the minimum qualifying period (MQP), which it found had ended on December 31, 2013.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. The General Division held an in-person hearing and, in a decision dated April 19, 2019, dismissed the Applicant's appeal, finding insufficient medical evidence that he was incapable regularly of performing a substantially gainful occupation as of the MQP.

[5] On June 24, 2019, the Applicant requested leave to appeal from the Appeal Division, alleging that the General Division committed the following errors:

- The appeal was heard by a single member of the General Division, rather than a panel of three.
- The General Division disregarded medical evidence clearly indicating that the Applicant's condition was severe and prolonged; and
- The General Division came to its decision before the Applicant made his final submissions.

[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.

ISSUES

[7] According to 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.1

[8] An appeal may be brought only if the Appeal Division first grants leave to appeal.[2] To grant leave to appeal, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[3] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[4]

[9] I must determine whether the Applicant has raised an arguable case for one or more of the following questions:

Issue 1: Was the General Division required to hear the appeal using a three-person panel?

Issue 2: Did the General Division overlook medical evidence indicating that the Applicant's condition was severe and prolonged?

Issue 3: Did the General Division come to its decision before the Applicant made his final submissions?

ANALYSIS

Issue 1: Was the General Division required to hear the appeal using a three-person panel?

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

[10] In my view, this submission does not have a reasonable chance of success on appeal.

[11] The Applicant suggests that he was entitled to, or at least had a reasonable expectation of, a hearing before a multi-person panel, but the law clearly indicates otherwise. Section 61 of the DESDA expressly requires hearings before the General Division to be heard by a single member. The General Division conducted the Applicant's appeal in accordance with the law, and I do not see how the format of the proceedings compromised his right to a fair hearing.

Issue 2: Did the General Division disregard medical evidence indicating that the Applicant's medical condition was severe and prolonged?

[12] Again, I do not see an arguable case for this question.

[13] Judges are presumed to have considered all the evidence before them.[5] The Applicant clearly disagrees with the General Division's decision, but he does not specify what items of medical evidence the General Division supposedly overlooked. In the end, this submission is so broad that it amounts to a plea for the Appeal Division to reconsider the existing evidence and decide in his favour. This I cannot do. My authority allows me to determine only whether any of the Applicant's reasons for appealing fall within the three grounds listed in the DESDA and whether any of them have a reasonable chance of success.

Issue 3: Did the General Division come to its decision before the Applicant made his final submissions?

[14] I do not see an arguable case here either.

[15] The General Division held its hearing on March 26, 2019. The following day, the General Division sent a letter to the parties that said:

> At the hearing, the [Applicant's] representative advised that he did not receive GD4, the Minister's submission. The GD4 is attached to this letter. The [Applicant] or his representative may file a response to this submission by sending it to the Tribunal at any time up to April 12, 2019. The Tribunal intends to issue its decision as soon as possible after that date.

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

On April 12, 2019, the Applicant faxed a letter to the General Division's attention, along with three medical documents.[6] The General Division issued its decision one week later.

[16] I see no indication that the General Division prepared its decision until the submission period had elapsed. It is true that the General Division did not explicitly refer to the Applicant's final submission, or any of the three enclosed documents, in its decision. However, that does not mean the General Division failed to consider them. In this case, the file exceeded 400 pages, and it was not reasonable to expect the General Division to address each and every document that was before it.

[17] I note, for instance, that the Applicant submitted a letter from Dr. David Lam dated October 22, 2018.[7] It was not mentioned in the decision, but that may have been because it was prepared nearly five years after the end of the Applicant's MQP. It is open to the General Division, as trier of fact, to examine the record and decide how much weight, if any, to give each item of evidence. The Appeal Division's role is not to second-guess whatever relevance the General Division chooses to attach to a given document.

CONCLUSION

[18] 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:	Sant Sharma, for the Applicant

[6] At least two of those documents had been previously submitted to the General Division. See GD2-211 and GD3-3.
[7] GD6-3.