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

Citation: *F. D. v Minister of Employment and Social Development*, 2019 SST 777

Tribunal File Number: AD-19-533

BETWEEN:

F. D.

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: August 22, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Applicant, F. D., is a high school graduate who works in an industrial bakery. She is 50 years old. In May 2017, she applied for Canada Pension Plan (CPP) disability benefits, claiming that she no longer felt able to work because of extreme back pain. In her application, she disclosed that she suffered from fractured spinal discs and arthritis, which prevented her from prolonged standing.

[3] The Respondent, the Minister of Employment and Social Development (Minister), refused the application on the grounds that the Applicant's disability was not "severe," as defined by the *Canada Pension Plan*.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. The General Division conducted a teleconference hearing and, in a decision dated July 24, 2019, found that the Applicant had not provided sufficient evidence that she was incapable regularly of performing substantially gainful work.[1] The General Division acknowledged that the Applicant had physical limitations but placed more weight on her continued employment in a full-time job.

[5] On July 31, 2019, the Applicant requested leave to appeal from the Tribunal's Appeal Division. Accompanying her application for leave to appeal was a letter that summarized her medical condition and expressed her disagreement with the General Division's decision. She said that she had two broken bones, three damaged discs, and arthritis from the middle to the bottom of her back. She said that, despite severe pain, she continues to work, because she does not have

[1] Since the Applicant's minimum qualifying period will not end until December 31, 2019, the General Division assessed the Applicant's condition as of the hearing date.

another source of income and needs to support her three children. She said that she had recently stopped working and had been approved for EI sick benefits as of June 17, 2019.

[6] Having reviewed the General Division 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 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.

[8] An appeal may be brought only if the Appeal Division first grants leave to appeal.[2] To grant leave for 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] My task is to determine whether any of the grounds that the Applicant has put forward fall under the categories specified in section 58(1) of the DESDA and whether any of them raise an arguable case on appeal.

ANALYSIS

[10] The Applicant argues that the General Division failed to recognize that her limitations have left her unable to work. She submits that the General Division dismissed her appeal despite evidence indicating that her condition was severe and prolonged, according to the CPP criteria for disability.

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

[11] I do not see an arguable case here.

[12] For the most part, the Applicant's submissions repeat evidence and arguments that she has already presented to the General Division. She has not identified how, in coming to its decision, the General Division failed to observe a principle of natural justice, committed an error of law, or relied on an erroneous finding of fact.

[13] The Applicant's reasons for appealing are broad. However, an appeal to the Appeal Division is not an opportunity for an applicant to re-argue their case and ask for a different outcome. My authority permits me to determine only whether any of the Applicant's submissions fall within the specified grounds of section 58(1) of the DESDA and whether any of them have a reasonable chance of success. I cannot simply reassess the evidence and substitute my judgment for the General Division's.

[14] While the Applicant may not agree with the General Division, it is not my role, as a member of the Appeal Division, to reassess the evidence but to determine whether its decision leads to an acceptable outcome under the facts and law. My review of the decision indicates that the General Division reviewed the available evidence supporting the Applicant's reported medical conditions and analyzed their effect on her capacity to regularly pursue substantially gainful employment. In doing so, the General Division found that while the Applicant suffered from back pain, it did not prevent her from carrying on a full-time job at the time of the hearing.

[15] I see nothing to suggest that the General Division misconstrued evidence or misapplied the law in coming to this conclusion. Indeed, the Applicant clearly testified that, despite pain, she was still employed at the bakery, although she had reduced her weekly hours from 60 to 48.[5] The Applicant suggests that she has recently stopped working, but she did not say so during the hearing, and the General Division cannot be blamed for failing to consider information that was never presented to it in the first place. Now, at the Appeal Division, it is too late to introduce new evidence.

[16] An appeal to the Appeal Division is not an occasion to reargue the substance of one's disability claim. In this case, the General Division found that the Applicant's continued full-time

[5] Recording of General Division hearing at 8:00.

employment at her regular job was good evidence of capacity and, in the absence of an arguable case that the General Division erred, I see no reason to second-guess that finding.

CONCLUSION

[17] 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:	F. D., self-represented