



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. K. v Minister of Employment and Social Development*, 2019 SST 840

Tribunal File Number: AD-19-489

BETWEEN:

**A. K.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

---

DECISION BY: Kate Sellar

DATE OF DECISION: September 4, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] A. K. (Claimant) started getting a *Canada Pension Plan* (CPP) retirement pension in February 2017. On May 7, 2018, the Minister received the Claimant's application for a CPP disability pension. The Claimant stated he could no longer work because of his medical conditions. The Minister denied the application initially and on reconsideration. The Claimant appealed to this Tribunal.

[3] The General Division summarily dismissed the Claimant's appeal on February 18, 2019. The General Division member explained that the Claimant's appeal had no reasonable chance of success. The Claimant appealed the General Division decision to the Appeal Division.

[4] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify allowing the appeal.

[5] The Claimant has not proven on a balance of probabilities that the General Division made an error under the DESDA. The appeal is dismissed.

### ISSUE

[6] Did the General Division member make an error under the DESDA when they summarily dismissed the Claimant's appeal?

### ANALYSIS

#### Reviewing General Division Decisions To Summarily Dismiss

[7] The General Division member must summarily dismiss an appeal if they are satisfied that the appeal has no reasonable chance of success.<sup>1</sup> The question the Tribunal must answer is

---

<sup>1</sup> DESDA, s 53(1); see also the case called *Miter v Canada (Attorney General)*, 2017 FC 262.

whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the Tribunal must dismiss the appeal after considering the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that the appellant might provide at a hearing.<sup>2</sup>

[8] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, the Appeal Division conducts a review of the General Division's decision to determine whether it contains errors. That review is based on the wording of the DESDA, which sets out the grounds of appeal for cases at the Appeal Division.<sup>3</sup> For example, the Appeal Division can review a General Division decision when the Claimant argues that the General Division made an error of law.<sup>4</sup>

**Did the General Division member make an error under the DESDA when they summarily dismissed the Claimant's appeal?**

[9] The General Division member did not make an error under the DESDA when they summarily dismissed the Claimant's appeal.

[10] The Claimant argues that the General Division made an error of law by summarily dismissing his appeal. He has explained that he has chronic obstructive pulmonary disease (COPD). He struggles with his activities of daily living. He sometimes goes without the medication he needs because he cannot afford to buy it all. The Claimant explains that it is difficult to struggle both with his health and financial problems at the same time.

[11] The Minister did not provide further argument at the Appeal Division, and the time for doing that has passed.

[12] The appeal has no reasonable chance of success. The Claimant has provided good arguments about why he needs the disability pension under the CPP. But the Tribunal has to apply the CPP laws to the Claimant's situation to figure out if he is eligible to have the CPP disability pension instead of the retirement pension. The law is clear. The General Division did

---

<sup>2</sup> This is described in a case called *A.Z. v Minister of Employment and Social Development*, 2018 SST 298.

<sup>3</sup> DESDA, s 58(1).

<sup>4</sup> DESDA, s 58(1)(b).

not misinterpret what the law requires. When the law is applied here, the Claimant is not eligible to cancel his retirement pension in favour of a disability pension.

[13] The CPP does not allow Claimants to cancel a retirement pension in favour of a disability pension where the disability application is made fifteen months or more after the retirement pension started to be paid. The Claimant applied for a disability pension more than fifteen months after the retirement pension started to be paid. The General Division explained this in the decision.

[14] There is also a benefit called the post-retirement disability benefit. The Claimant has to have a minimum qualifying period of 2019 or later to qualify for that benefit. The Claimant's MQP ended on December 31, 2016 so he does not qualify.

[15] I have reviewed the record from the General Division. I am satisfied that the General Division did not ignore or misunderstand any evidence in the case.<sup>5</sup>

## CONCLUSION

[16] The appeal is dismissed.

Kate Sellar  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	A. K., Appellant

---

<sup>5</sup> This review of the record is consistent with the principles in *Karadeolian v. Canada (Attorney General)*, 2016 FC 615.