



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. L. v Minister of Employment and Social Development*, 2019 SST 986

Tribunal File Number: AD-19-526

BETWEEN:

G. L.

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: September 13, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] G. L. (Claimant) began to receive a Canada Pension Plan retirement pension in September 2016. In December 2017, he applied for a Canada Pension Plan disability pension and claimed that he was disabled by a number of conditions, including brain damage from a stroke, diabetes, low energy, back, neck and head pain. The Minister of Employment and Social Development refused the disability pension application because it was made more than 15 months after the Claimant had begun to receive the retirement pension.

[3] The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division dismissed the appeal. The Claimant appealed the General Division's decision to the Tribunal's Appeal Division. The Appeal Division allowed the appeal and referred the matter back to the General Division so that it could consider whether the Claimant was incapable of forming or expressing an intention to apply for the disability pension before he did.

[4] The General Division reconsidered the matter, and dismissed the Claimant's appeal again because the Claimant had not presented any evidence regarding incapacity. Leave to appeal this decision to the Tribunal's Appeal Division is dismissed because the Claimant has not presented any ground of appeal under the *Department of Employment and Social Development Act* (DESD Act) on which the appeal has a reasonable chance of success.

PRELIMINARY MATTER

[5] The Claimant did not present any grounds of appeal under the DESD Act in the Application to the Appeal Division. The Tribunal wrote to him and requested that he provide this. The Claimant responded, stating that the General Division made an important error regarding the facts.

ISSUE

[6] Does the appeal have a reasonable chance of success because the General Division based its decision on an erroneous finding of fact without regard for all of the medical evidence?

ANALYSIS

[7] The DESD Act governs the Tribunal's operation. It provides rules for appeals to the Appeal Division. An appeal is not a re-hearing of the original claim, but a determination of whether the General Division made an error under the DESD Act. The Act also states that there are 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.¹ In addition, leave to appeal must be refused if the appeal has no reasonable chance of success.²

[8] The Claimant argues that the General Division made a number of erroneous findings of fact. However, he only specifies one – that the General Division decision states that there was no medical evidence when there was medical evidence in the file.

[9] The main issue that the General Division had to consider was whether the Claimant was incapable of forming or expressing an intention to apply for the disability pension before he did. The General Division decision states at the pre-hearing conference the Claimant refused to file any further medical evidence or documents for the reconsideration hearing,³ and that although the Claimant was severely disabled after a stroke in May 2017, there was no evidence that he lacked capacity to form or express an intention to apply for the disability pension before he made the application.⁴ There was an evidentiary basis for this finding of fact. Therefore, the appeal does not have a reasonable chance of success on this basis.

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ General Division decision at para. 5

⁴ General Division decision at para. 15

[10] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. There is no suggestion that the General Division made an error in law or failed to observe a principle of natural justice.

CONCLUSION

[11] Leave to appeal is refused because the Claimant has not presented a ground of appeal that falls under the DESD Act and on which the appeal has a reasonable chance of success.

Valerie Hazlett Parker
Member, Appeal Division

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| REPRESENTATIVE: | G. L., Self-represented |
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