



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. Z. v Minister of Employment and Social Development*, 2019 SST 1050

Tribunal File Number: AD-19-262

BETWEEN:

**P. Z.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: October 17, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] P. Z. (Claimant) completed Grade 10 before he entered the workforce. He last worked in construction until July 2009. He applied for a Canada Pension Plan disability pension in September 2017. He claimed that he was disabled by a number of medical conditions including back and shoulder pain, headaches and asthma. He says that he became disabled in 2009.

[3] The Minister of Employment and Social Development granted the application, and found that the Claimant was disabled in 2009. However, under the *Canada Pension Plan* a claimant cannot be found to be disabled more than 15 months before the Minister received the disability pension application.<sup>1</sup> Therefore, the Minister decided that the Claimant was deemed disabled in June, 2016. Payment of the pension was to start four months after this, which is October 2016.<sup>2</sup>

[4] The Claimant appealed the Minister's decision regarding when the pension would begin to be paid to the Tribunal. The Tribunal's General Division summarily dismissed the appeal because it had no reasonable chance of success. The Claimant's appeal to the Tribunal's Appeal Division is dismissed because the General Division did not make an error under *the Department of Employment and Social Development Act* on which the Appeal Division can intervene.

### ISSUE

[5] Did the General Division make an error under the DESD Act on which the Appeal Division can intervene?

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<sup>1</sup> *Canada Pension Plan* s. 42(2)(b)

<sup>2</sup> *Canada Pension Plan* s. 69

## ANALYSIS

[6] 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. Therefore, to succeed on appeal the Claimant must prove that the General Division made at least one of these errors.

[7] The Claimant wrote in the appeal letter that he felt that he was not being treated fairly, and that he was not aware of the "15 months cut off period from the date the application was received". He does not, however, explain how he was treated unfairly. Nothing suggests that the Claimant was unable to present his legal case to the Tribunal or that the General Division was biased. Therefore, there has been no failure to observe a principle of natural justice.

[8] The General Division decision correctly sets out the relevant law and applied it to the facts. It made no error in law.

[9] I have read the General Division decision and reviewed the written record. The General Division did not overlook or misconstrue any important information. It did not base its decision on any erroneous findings of fact.

[10] The Claimant has a sympathetic case. If he had applied earlier for the disability pension, he likely would have received it sooner. Unfortunately for the Claimant, the Tribunal cannot make its decisions based on compassion, sympathy or extenuating circumstances. The Claimant has not presented a ground of appeal under the DESD Act on which the appeal has a reasonable chance of success.

[11] The appeal must therefore be dismissed.

Valerie Hazlett Parker  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
SUBMISSIONS:	P. Z., Appellant