



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. H. v Minister of Employment and Social Development*, 2019 SST 1356

Tribunal File Number: AD-18-710

BETWEEN:

M. H.

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: November 22, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] M. H. (Claimant) completed Grade 10 before he began to work. He worked on an assembly line, and doing paperwork at this workplace. The Claimant retired in 2015 and began to receive a Canada Pension Plan retirement pension. In 2016 he applied for a Canada Pension Plan disability pension and claimed that he was disabled by numerous conditions, including a heart attack, high blood pressure, arthritis in his hip and knee, herniated disc, cracked vertebrae, and overall pain.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal because it decided that the Claimant did not have a severe disability before he retired.

[4] Leave to appeal to the Tribunal's Appeal Division is dismissed because the Claimant has not presented a ground of appeal that falls under the *Department of Employment and Social Development Act* (DESD Act).

ISSUES

[5] Does the appeal have a reasonable chance of success because the General Division made an error under the DESD Act?

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 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 doesn't have a reasonable chance of success.²

[7] In the Application to the Appeal Division, the Claimant wrote that the General Division based its decision on erroneous findings of fact. He did not set out what findings of fact were erroneous, or why. The Tribunal wrote to the Claimant and asked that he provide this information. Neither he nor his representative responded to this letter.

[8] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. It also explained that it gave little weight to the Claimant's testimony because he was not credible, and why it reached this conclusion.³

[9] The General Division decision also considered each of the Claimant's medical conditions, and explained why it decided that they were not severe. For example, the decision states that the Claimant said that he had a herniated disc in his neck that caused arm numbness, muscle spasms and difficulty turning his neck when driving. However, there were no imaging reports to support this and the family doctor reported that the Claimant had degenerative disc disease, with episodic neck pain and limitations when this flared up.⁴

[10] In addition, the General Division considered the cumulative effect of the Claimant's conditions and their impact on his capacity regularly to pursue any substantially gainful occupation.⁵

[11] There is no indication that the General Division made an error in law, or that it failed to observe a principle of natural justice.

CONCLUSION

[12] Leave to appeal is refused.

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ General Division decision at para. 8

⁴ General Division decision at para. 11

⁵ General Division decision at para. 23 and following

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	Prabhakaran Nair, for the Applicant
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