



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. D. v Minister of Employment and Social Development*, 2019 SST 1349

Tribunal File Number: AD-18-796

BETWEEN:

K. D.

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 18, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] K. D. completed high school and earned a hairdressing certificate. She worked as a retail store manager until she was in two car accidents in 2014 and 2015. In January 2016, the Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by a number of conditions that resulted from the accidents. These include severe headaches and difficulty with standing, sitting, lifting, and sleeping.

[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 the date of the hearing. Leave to appeal this decision to the Appeal Division is refused because the appeal does not have a reasonable chance of success on the basis that the General Division based its decision on any erroneous findings of fact regarding her work after the car accidents.

ISSUE

[4] Does the appeal have a reasonable chance of success because the General Division based its decision on an erroneous finding of fact under *the Department of Employment and Social Development Act* (DESD Act) regarding her work after the car accidents?

ANALYSIS

[5] The *Department of Employment and Social Development Act* (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. Only three kinds of errors 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 does not have a reasonable chance of success.²

[6] The Claimant says that the appeal has a reasonable chance of success because the General Division based its decision on two erroneous findings of fact regarding her work after the last car accident. To succeed on this basis on appeal the Claimant must prove three things: that a finding of fact was erroneous (in error); that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and that the decision was based on this finding of fact.³

[7] First, the Claimant says that the General Division erred because it failed to consider that although she returned to her prior job after the last car accident, she is no longer working there. However, the Claimant does not say that she stopped working before the General Division hearing. So, the General Division's finding of fact that the Claimant was working at Mobility in Motion and had been doing so for about one year was not erroneous.⁴ The appeal has no reasonable chance of success on the basis that this finding of fact was erroneous under the DESD Act.

[8] Second, the Claimant says that the General Division erred because her income was nominal. However, the General Division considered this. The decision states that the Claimant testified that she earned \$15 per hour.⁵ Her Record of Employment and income tax information showed total earnings for 2017 of \$10, 125.⁶ The General Division considered whether this income was substantially gainful under the *Canada Pension Plan Regulations*, and concluded that if she had worked for the entire calendar year it would be.⁷ The General Division also considered whether the Claimant's employer was a benevolent employer under the *Canada*

¹ DESD Act s. 58(1)

² DESD Act s. 58(2)

³ *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

⁴ General Division decision at para. 19

⁵ *Ibid.* at para. 18

⁶ *Ibid.* at para. 19

⁷ *Ibid.* at para. 22, 23

Pension Plan scheme, and decided that it was not.⁸ Therefore, the General Division made no erroneous finding of fact regarding the Claimant's income.

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

CONCLUSION

[10] Leave to appeal is therefore dismissed.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	André Bourdon, counsel for the Applicant
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⁸ Ibid. at paras. 25-30