



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. C. v Minister of Employment and Social Development*, 2019 SST 1365

Tribunal File Number: AD-19-701

BETWEEN:

F. C.

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 27, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] F. C. (Claimant) says that she is disabled by joint pain and degenerative disc disease. She first applied for a Canada Pension Plan disability pension in 1999. The Minister of Employment and Social Development (as it is now called) refused the application because it decided that the Claimant had capacity to work. The Claimant's appeal to the Office of the Commissioner of Review Tribunals was dismissed, as was her application to the Pension Appeals Board.

[3] The Claimant applied again for the disability pension in 2004. The Minister refused the application. The Claimant's request that this decision be re-opened was also refused.

[4] The Claimant applied for the disability pension a third time in 2009. The Minister again refused the application. The Claimant did not appeal this decision.

[5] Finally, the Claimant applied for the disability pension in 2016. The Minister again refused the application, and the Claimant appealed this decision to this Tribunal. The Tribunal's General Division dismissed the appeal because it decided that the matter had been decided and the legal doctrine of *res judicata* applied, so the appeal could not be decided again.

[6] The Claimant now asks for leave (permission) to appeal this decision to the Tribunal's Appeal Division. Leave to appeal is refused because the Claimant has not presented a ground of appeal on which the appeal has a reasonable chance of success.

GROUND OF APPEAL

[7] 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. Instead, I must decide whether the General Division:

- a) failed to provide a fair process;

- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.¹

[8] However, before I can decide an appeal, I must decide whether to grant leave (permission) to appeal. The DESD Act says that leave to appeal must be refused if the appeal has no reasonable chance of success.² Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that falls under the DESD Act and on which the appeal has a reasonable chance of success.

ANALYSIS

[9] The Claimant did not present any grounds of appeal in the Application to the Appeal Division. She simply “checked off” the box on the application form that referred to the General Division failing to observe principles of natural justice (not providing a fair process). The Tribunal wrote to the Claimant and set out the grounds of appeal under the DESD Act and asked her to provide this information. Again, the Claimant marked the section regarding a failure to observe principles of natural justice but provided no explanation.

[10] The principles of natural justice are concerned with ensuring that parties to an appeal have the opportunity to present their case to the Tribunal, to know and answer the other’s legal case and to have a decision made by an independent decision-maker based on the law and the facts. The Claimant has not pointed to anything that suggests that the General Division failed to observe these principles.

[11] 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 it made an error in law.

¹ This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

² DESD Act s. 58(2)

[12] Therefore, the Claimant has not presented any ground of appeal under the DESD Act on which the appeal has a reasonable chance of success.

CONCLUSION

[13] Leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	F. C., Self-represented
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