Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *C. R. v Minister of Employment and Social Development*, 2019 SST 1371

Tribunal File Number: AD-19-790

BETWEEN:

C. R.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Jude Samson

Date of Decision: November 29, 2019

DECISION AND REASONS

DECISION

[1] The request for leave to appeal is refused.

OVERVIEW

[2] The Applicant, C. R., was diagnosed with cancer in 2010, and has not worked since the start of her cancer treatments. According to the Applicant, her condition worsened even after those treatments were over. More recently, the Applicant was diagnosed with severe fibromyalgia.

[3] In March 2018, the Applicant applied for a disability pension under the *Canada Pension Plan* (CPP). On her application, the Applicant said that she has been unable to work since 2011. The Minister of Employment and Social Development reviewed her application, but decided that she did not meet the requirements for receiving a disability pension.

[4] The Applicant appealed the Minister's decision to the Tribunal's General Division, but she lost. The Applicant now wants to appeal the General Division decision to the Tribunal's Appeal Division, but she requires leave (or permission) for the file to move forward.

[5] Unfortunately for the Applicant, I have decided that her appeal has no reasonable chance of success. As a result, I must refuse leave to appeal. These are the reasons for my decision.

ISSUE

[6] Does the Applicant's appeal have a reasonable chance of success?

ANALYSIS

[7] The Tribunal follows the law and procedures set out in the *Department of Employment and Social Development Act* (DESD Act). For that reason, this appeal is following a two-step

process: the leave to appeal stage and the merits stage. If the appeal has no reasonable chance of success, then it cannot move on to the merits stage.[1]

[8] The legal test that the Applicant needs to meet at this stage is a low one: Is there any arguable ground on which the appeal might succeed?[2] To decide this question, I will focus on whether the General Division could have committed any of the errors listed under section 58(1) of the DESD Act.[3]

The Applicant's appeal has no reasonable chance of success

[9] The challenge the Applicant faces when trying to obtain a disability pension is related to the contributions that she made to the CPP. Those contributions define the period within which the Tribunal had to find that the Applicant developed a severe and prolonged disability.[4] As a result, the main issue the General Division had to decide was whether the Applicant became disabled between January 1, 2010, and May 31, 2010.

[10] Unfortunately for the Applicant, however, the General Division was unable to find evidence showing that she became disabled that early. Indeed, even the Applicant wrote on her application form that her disability started in 2011.[5]

[11] In support of this application to the Appeal Division, the Applicant argues that the General Division made a mistake when it wrote that she had worked full time from July 2009 to March 2012.[6] I recognize that these dates are inconsistent with the evidence the Applicant gave at the General Division hearing, but the General Division appears to have taken them from her application form.[7]

[12] In any event, nothing turns on this possible error. The Applicant explained to the General Division that her disability began, at its earliest, with the start of her cancer treatments in

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[1] This is described in sections 58(2) and 58(3) of the DESD Act.
[2] *Osaj v Canada (Attorney General)*, 2016 FC 115 at para 12.
[3] Section 58(1) of the DESD Act defines the errors (or grounds of appeal) that I can consider.
[4] Section 42(2)(a) of the CPP defines the terms "severe" and "prolonged" disability. Sections 44(2) and 44(2.1) of the CPP define how a person's contributions are used to determine their eligibility dates (or minimum qualifying period).
[5] GD2-80.
[6] General Division decision at para 2.
[7] GD2-78.

August 2010.[8] As a result, the General Division relied on this date when it concluded that the Applicant could not have been disabled before May 31, 2010. In other words, this possible error had no impact on the outcome of the case.

[13] The Applicant also argues that the General Division ignored her record of earnings, or overlooked some of her contributions to the CPP.

[14] The Applicant's record of earnings appears in the file at several places.[9] The General Division used it to determine the Applicant's eligibility periods for a disability pension. I can see no error in the way that the General Division made those calculations. In addition, the General Division had no power to change the amounts on the Applicant's record of earnings. Instead, the General Division could assume that the record of earnings was correct.[10]

[15] Finally, the Applicant argues that the General Division should not have dismissed a letter from her family doctor, Dr. Larocque. It is somewhat unclear which letter the Applicant is referring to. I note, however, that the letter submitted to the Tribunal in March 2019 does not refer to the Applicant's condition in 2010. In addition, I was unable to find any other documents from Dr. Larocque showing that the Applicant's disability began before May 2010.

[16] In fact, clinical notes taken by Dr. Larocque appear to be some of the best evidence about the Applicant's condition at the relevant time. And the General Division made clear that it had reviewed those notes.[11]

[17] Regardless of the conclusions above, I also reviewed the file, listened to the audio recording of the General Division hearing, and examined the decision under appeal. In short, the General Division set out the correct legal test and explained how it arrived at its conclusion.

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[8] General Division decision at para 21.
[9] See, for example, GD2-66 to 77.
[10] CPP, s 97(1).
[11] General Division decision at para 13.

[18] My review of the file did not reveal relevant evidence that the General Division might have ignored or misinterpreted.[12] Finally, the Applicant has not argued that the General Division acted unfairly in any way.

[19] Overall, therefore, I have concluded that the Applicant does not have an arguable case on appeal. In other words, the appeal has no reasonable chance of success.

CONCLUSION

[20] I sympathize with the Applicant's circumstances. I have concluded, however, that her appeal has no reasonable chance of success. I have no choice, then, but to refuse leave to appeal.

Jude Samson
Member, Appeal Division

REPRESENTATIVE:	C. R., self-represented

[12] Federal Court decisions like *Griffin v Canada (Attorney General)*, 2016 FC 874 and *Karadeolian v Canada (Attorney General)*, 2016 FC 615 say that I should normally grant leave to appeal if the General Division might have ignored or misinterpreted relevant evidence. This is true even if there are problems with the Applicant's written documents.

Relevant Legal Provisions

Department of Employment and Social Development Act

Grounds of appeal

58 (1) The only grounds of appeal are that

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

Criteria

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

Decision

(3) The Appeal Division must either grant or refuse leave to appeal.