



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. S. v Minister of Employment and Social Development*, 2019 SST 1372

Tribunal File Number: AD-19-473

BETWEEN:

A. S.

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 29, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] A. S. (Claimant) obtained a degree in mechanical engineering. He last worked doing light duties in a X. In July 2017 he applied for a Canada Pension Plan disability pension and claimed that he was disabled by back injuries that resulted in significant physical limitations. He claimed that he became disabled in July 2014.

[3] The Minister of Employment and Social Development granted the Claimant's application on reconsideration, and decided that the Claimant was deemed disabled in April 2016 (fifteen months before he applied for the pension). This decision was made on June 8, 2018.

[4] The Claimant appealed the Minister's decision regarding the date that he was deemed to be disabled. He made the application in February 2019. This was beyond the time allowed to appeal. The Tribunal's General Division refused to extend the time to appeal because the appeal had no reasonable chance of success.

[5] The Claimant now asks for leave (permission) to appeal the General Division's decision to the Tribunal's Appeal Division. Leave to appeal is refused because the Claimant has not presented a ground of appeal that falls under the *Department of Employment and Social Development Act* (DESD Act) and on which the appeal has a reasonable chance of success.

PRELIMINARY MATTER

[6] The Appeal Division held a Case Conference before making this decision. At the Case Conference a number of issues were discussed, and the relevant law was explained to the parties. The parties were then given additional time to file written submissions regarding leave to appeal. These submissions were considered when making this decision.

GROUND OF APPEAL

[7] 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. 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 does not have a 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. The Claimant's grounds of appeal are considered in this context below.

ISSUES

[9] The issues in this application are:

[10] Should leave to appeal be granted because the medical adjudicators made errors and disrespected the Claimant's file?

[11] Should leave to appeal be granted because the Claimant first tried to address his disagreement with Service Canada's decision before he applied to the Tribunal?

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

² DESD Act s. 58(2)

[12] Should leave to appeal be granted because the General Division made an error under the DESD Act?

ANALYSIS

Issue 1: Service Canada's errors

[13] In the Application to the Appeal Division, the Claimant makes a number of complaints about how his application for the disability pension was handled by Service Canada before he appealed to the Tribunal. His complaints include:

- That his medical evidence was disrespected because it demonstrated that he became disabled when he was injured in 2014, not in 2016
- His documents were scrambled/shuffled/misfiled by Service Canada
- Service Canada did not provide the Tribunal with all of the documents he had sent it
- He disagrees with the date of disability onset decided by Service Canada

I appreciate the Claimant's frustration with this appeal. However, the Tribunal cannot give any remedy for the actions of Service Canada in its dealings with his application. The Tribunal was created by the DESD Act. As such, it only has legal authority given to it under the Act. It says that the Tribunal may only decide:

- a) Whether any benefit is payable and its amount;
- b) Whether a person is eligible for a division of unadjusted pensionable earnings and its amount;
- c) Whether a person is eligible for an assignment of a retirement pension and its amount;
and
- d) Whether a penalty should be imposed.³

³ DESD Act s. 63(2)

Therefore, the appeal does not have a reasonable chance of success and leave to appeal cannot be granted on this basis.

[14] In addition, the *Canada Pension Plan* states clearly that the earliest a person can be found to be disabled is fifteen months before they applied for the disability pension.⁴ Therefore, even if the Claimant was actually disabled before this date, under the law, the maximum retroactivity allowed is 15 months. Service Canada decided that the Claimant was disabled 15 months before he applied for the pension. It made no error in doing so.

Issue 2: The Claimant's efforts to address his concerns before he appealed

[15] The Claimant also says that because he sent letters to Service Canada and tried to communicate with it before he appealed the reconsideration decision to the Tribunal, his appeal should not be considered late. However, the DESD Act says that an appeal must be made within 90 days of when the reconsideration decision is communicated to him.⁵ This time can be extended.⁶

[16] The General Division decision considered the Claimant's efforts to communicate with Service Canada when it made its decision not to extend time to make the application. The decision states that these efforts demonstrated that he had a continuing intention to appeal and a reasonable explanation for his delay in doing so. These factors favoured granting an extension of time.⁷ However, these factors were outweighed by the lack of a reasonable chance of success on appeal.⁸

[17] The General Division considered the Claimant's legal position on this issue. Leave to appeal cannot be granted on this basis.

⁴ *Canada Pension Plan* s. 42(2)(b)

⁵ DESD Act s. 52(1)

⁶ DESD Act s. 52(2)

⁷ General Division decision at para. 13

⁸ *Ibid.* at para. 14

Issue 3: Error under the DESD Act

[18] The Claimant's arguments do not point to any General Division error that can be considered under the DESD Act.

[19] I have reviewed the General Division decision, the documents filed with the Appeal Division and the General Division's written record. The General Division did not overlook or misconstrue any important information.

[20] The General Division made no error in law.

[21] There is also no indication that the General Division failed to provide a fair process.

CONCLUSION

[22] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	A. S., Self-represented
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