



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. B. v Minister of Employment and Social Development*, 2019 SST 1403

Tribunal File Number: AD-19-791

BETWEEN:

K. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: December 12, 2019

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] K. B. (Claimant) was in a car accident in November 2013. She applied for a disability pension under the *Canada Pension Plan* (CPP) on December 20, 2016. She explained that she could not work because she had migraines, neck and back pain, and a traumatic brain injury. The Minister denied the application initially and on reconsideration. The Claimant appealed the General Division's decision to the Appeal Division.

[3] I must decide whether there is an arguable case that the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify granting permission (leave) to appeal.

[4] The Claimant does not have an arguable case for an error by the General Division. The application for leave to appeal is refused.

PRELIMINARY MATTERS

[5] The Claimant attached new documents to her application for leave to appeal at the Appeal Division.¹ The General Division member did not have all of these documents when she made her decision.

[6] The Appeal Division does not consider new evidence.² There are some exceptions to that rule, but none of them apply here. The Appeal Division will not consider any new evidence that the Claimant provided.

¹ The attachments for the Appeal Division start at AD1-6 through to AD1-14.

² *Parchment v Canada (Attorney General)*, 2017 FC 354.

ISSUE

[7] Is there an arguable case that the General Division made an error that would justify granting the Claimant permission to appeal?

ANALYSIS

Reviewing General Division Decisions

[8] The Appeal Division does not give people a chance to re-argue their case in full at a new hearing. Instead, the Appeal Division reviews the General Division's decision to decide whether there are any errors. That review is based on the wording of the DESDA, which sets out the reasons that form the basis for any appeal (grounds of appeal).³ Basically, General Division decisions can be remedied by the Appeal Division when the General Division: fails to provide a fair process, makes an error of fact, or makes an error of law.

[9] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.⁴ To meet this requirement, the claimant needs to show only that there is some arguable ground on which the appeal might succeed.⁵ That is a low test to meet.

CPP Disability Pension

[10] To receive a disability pension, claimants must show that they have a severe and prolonged disability on or before the end of their minimum qualifying period (MQP).⁶ The Minister calculates the MQP based on the claimant's contributions to the Canada Pension Plan. In this case, the Claimant's MQP ended on December 31, 2012.

[11] The Claimant made some contributions to the Canada Pension Plan in 2013. But those contributions were not high enough to meet a certain level set by the law (that level is called the "year's basic exemption"). The Claimant can also qualify for the disability pension if she can show that she was disabled in 2013, between January 1, 2013 and March 30, 2013. That period

³ DESDA, s 58(1).

⁴ DESDA, s 58(2).

⁵ The Federal Court explains this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁶

of time in 2013 is called the period of proration. The Claimant's MQP and period of proration has never changed because she did not have any more contributions to the Canada Pension Plan after 2013.

Is there an arguable case that the General Division made an error?

[12] There is no arguable case that the General Division made an error.

[13] The General Division decided that the Claimant's health problems began after her car accident. The car accident happened after the end of the MQP and after the end of the period of proration. As a result, the General Division decided that the Claimant did not show that she had a severe disability by December 31, 2012 or in 2013 by March 31, 2013.⁷

[14] The General Division could not extend the Claimant's MQP. The General Division considered the updated record of contributions to the Canada Pension Plan that the Claimant provided after the hearing.⁸ The updated record showed that the Claimant made contributions in 2010, but not enough to meet the year's basic exemption. There was no change to the Claimant's MQP.

[15] The Claimant argues on appeal that she was given the wrong information about what the year's basic exemption was for 2010. One time, someone at Service Canada told her that it was \$3500, and another time someone told her that it was \$6500. The Claimant has explained and documented the problems she had with her employer in 2010. She never received a statement of earnings for tax purposes for her work in 2010.⁹

[16] In my view, there is no arguable case for an error by the General Division. It seems that the Claimant did not always get correct information about the CPP. However, she is not alleging that the General Division gave her the wrong information. My role is to decide whether the General Division of this tribunal might have made an error. The General Division did not have the power to change the Claimant's MQP. My review of this appeal does not lead me to conclude that the General Division might have made an error about the facts in the case, or that the

⁷ General Division decision, para 17.

⁸ General Division decision, para 10. The document the General Division considered is GD15-2 to 3.

⁹ AD1-3.

General Division failed to apply the correct legal tests. The Claimant does not seem to be arguing that the General Division failed to provide a fair process.

[17] The General Division had to decide whether the Claimant had a severe and prolonged disability during her MQP or during her period of proration. The General Division found that the Claimant was not disabled within the meaning of the CPP at those key periods of time.

[18] I am satisfied that the General Division did not ignore or misunderstand any evidence in this case. The Claimant's contributions to the CPP as a result of her earnings in 2010 did not change her MQP. Receiving Employment Insurance benefits in any given year does not translate to increased contributions to the Canada Pension Plan either.

[19] The Claimant was injured in a car accident and has a disability as a result. But her appeal has no reasonable chance of success. The General Division applied the law (about when the Claimant had to show that she was disabled) to the facts (about the Claimant's disability). The General Division must apply the law as it is written. The General Division does not have the ability to change the MQP to better match up with when the Claimant was injured in the car accident.

CONCLUSION

[20] The application for leave to appeal is refused.

Kate Sellar
Member, Appeal Division

REPRESENTATIVE:	K. B., self-represented
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