



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. M. v Minister of Employment and Social Development*, 2019 SST 1415

Tribunal File Number: AD-19-856

BETWEEN:

S. M.

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: December 18, 2019

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] S. M. (Claimant) completed Grade 10 and has some computer training. He worked as a small engine mechanic until July 2018. The Claimant began to receive a Canada Pension Plan retirement pension in December 2015. In August 2018, he applied for a Canada Pension Plan disability pension and claimed that he was disabled by a number of conditions, including heart conditions, arthritis, a rotator cuff injury and physical limitations.

[3] The Minister of Employment and Social Development refused the application because the Claimant had begun to receive a Canada Pension Plan retirement pension more than 15 months before he applied for the disability pension, and under the *Canada Pension Plan* could not be found to be disabled before he began to receive the retirement pension.

[4] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason. Leave (permission) to appeal to the Tribunal's Appeal Division is refused because the General Division did not base its decision on any important factual error.

GROUND OF APPEAL

[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. 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

[6] 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. 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.

ISSUES

[7] Does the appeal have a reasonable chance of success because the General Division based its decision on one of the following important factual errors?

- a) The Claimant appealed his 2008 application to the Office of the Commissioner of Review Tribunals; or
- b) He began to receive the retirement pension in December 2015, not June 2015.

ANALYSIS

[8] One ground of appeal that I can consider is whether the General Division based its decision on an important factual error. To succeed on appeal on this basis, the Claimant must prove three things:

- a) that a finding of fact was erroneous (in error);
- b) that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and
- c) that the decision was based on this finding of fact.²

The Claimant's argument that the General Division based its decision on two such errors is

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

² *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

considered below.

The 2008 disability pension application

[9] First, the Claimant says that the General Division based its decision on an important factual error because it failed to consider his 2008 application for the disability pension. The decision states that a final decision on that application was made by the Minister.³ The Claimant says that he attended a hearing before a three-person panel. This would likely have been a hearing before a Review Tribunal based on an appeal to the Office of the Commissioner of Review Tribunals.

[10] However, whether the decision was made by the Minister or a Review Tribunal, a final decision was made on the 2008 disability application. The Tribunal has no legal authority to reopen that application or to reconsider a final decision. Therefore, the appeal has no reasonable chance of success on the basis that the General Division made an error regarding who gave the final decision on the 2008 application

When the Claimant began to receive the retirement pension

[11] Second, the Claimant argues that the General Division based its decision on an erroneous finding of fact because he began to receive the retirement pension in December 2015 and the General Division decision says that he began to receive it in June 2015.⁴

[12] The Claimant is correct that the General Division made an error regarding what date he began to receive the retirement pension. He began to receive this in December 2015.

[13] However, the General Division made no error when it decided that the Claimant was ineligible to replace the retirement pension with a disability pension. The General Division decision correctly states that a retirement pension cannot be replaced with a disability pension if the person applied for the disability pension more than 15 months after he began to receive the retirement pension.⁵ It also correctly states that the Claimant applied for the disability pension in

³ General Division decision at para. 8

⁴ General Division decision at para.2

⁵ General Division decision at para. 7

August 2018, which was more than 15 months after he began to receive the disability pension (15 months before August 2018 is May 2017).⁶ Therefore, the appeal also has no reasonable chance of success on this basis.

[14] Finally, the Claimant says that he did not know about this 15-month rule to replace the retirement pension with the disability pension. Unfortunately for the Claimant, a person's lack of knowledge of the law is not a ground of appeal under the DESD Act.

[15] I have read the General Division decision and reviewed the written record. The General Division did not overlook or misconstrue any important information. There is also no suggestion that the General Division made an error in law or failed to provide a fair process.

CONCLUSION

[16] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	S. M., Self-represented
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⁶ *Ibid.*