



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. L. v Minister of Employment and Social Development*, 2020 SST 44

Tribunal File Number: AD-19-878

BETWEEN:

A. L.

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: January 22, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] A. L. (Claimant) has not worked for a number of years. He has applied for a Canada Pension Plan disability pension three times. The first application was refused by the Minister of Employment and Social Development (as it is now called). The Claimant's appeal from this decision to the Office of the Commissioner of Review Tribunals was dismissed, as was the Claimant's application for judicial review of the decision.

[3] The Claimant's second application was also refused by the Minister. The Claimant did not request that the Minister reconsider this decision, so it is final.

[4] The third application was also refused by the Minister. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal because it decided that the legal doctrine of *res judicata* (the matter has been decided) applied.

[5] The Claimant's application for leave to appeal the General Division's decision to the Tribunal's Appeal Division is refused because the appeal does not have a reasonable chance of success.

GROUND OF APPEAL

[6] 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

[7] 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.

ANALYSIS

[8] The Claimant checked the boxes for all of the grounds of appeal on the Application to the Appeal Division but did not provide any written explanation of his grounds of appeal. The Tribunal then wrote to the Claimant and asked that he explain why leave to appeal should be granted. The Claimant responded by explaining that he is disabled by a seizure disorder, and included a recent letter from his doctor that confirms this.

[9] The doctor's letter is new evidence because it was not presented to the General Division. New evidence is not ordinarily permitted at the Appeal Division.³ This evidence does not fall into any of the exceptions to this rule. Therefore, the appeal does not have a reasonable chance of success because of new evidence.

[10] The Claimant's explanation of his seizure disorder and its impact on his health also does not point to any error made by the General Division. Leave to appeal cannot be granted on this basis.

[11] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. Although it did not examine the Claimant's medical condition, this was not necessary because the doctrine of *res judicata* applied.

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

² DESD Act s. 58(2)

³ *Canada (Attorney General) v. O'Keefe*, 2016 FC 503

[12] There is no suggestion that the General Division made an error in law or failed to provide a fair process.

CONCLUSION

[13] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	A.L., Self-represented
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