



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. C. v Minister of Employment and Social Development*, 2020 SST 112

Tribunal File Number: AD-20-94

BETWEEN:

K. C.

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: February 17, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] K. C. (Claimant) completed Grade 12 and obtained an electrician's license. He worked as an electrician until 2007. He stopped working because he felt dizzy and was concerned for his safety and that of his workers. Later, the Claimant was diagnosed with cancer. In 2019, the Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled by cancer in his head.

[3] The Minister of Employment and Social Development refused the application because it decided that the Claimant did not have a severe disability before the end of the minimum qualifying period (MQP – the date by which a claimant must be found to be disabled in order to receive the disability pension. In this case, the MQP is December 31, 2008). The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason.

[4] 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

[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] 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.

ISSUE

[7] Does the appeal have a reasonable chance of success because the General Division failed to provide the Claimant with a fair process when it failed to explain what the MQP is?

ANALYSIS

[8] The General Division must provide parties to an appeal with a fair process. This means that each party must have an opportunity to present their case to the Tribunal, to know and understand the other party's legal case, and to have a decision made by an independent decision maker based on the law and the facts.

[9] The Claimant argues that leave to appeal should be granted because the General Division did not provide a fair process. In particular, he says that although he asked, the General Division did not explain what the MQP is, especially the requirement to make valid contributions to the Canada Pension Plan for three of six years or four of six years.

[10] The *Canada Pension Plan* requires that valid contributions be made in four years in a six-year period. The MQP is the date at the end of this six-year period.

[11] An exception to this is if a person has made valid contributions for 25 years, then they have to have made valid contributions for three years in a six-year period.

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

² DESD Act s. 58(2)

[12] The Claimant says that this was not explained to him and so he was not provided with a fair process.

[13] However, the Minister explained this to the Claimant in its initial decision to refuse the application,³ and reconsideration decision.⁴ The General Division decision also r explained the concept of the MQP to the Claimant in detail.⁵ The appeal does not have a reasonable chance of success on the basis that this legal concept was not explained to the Claimant so that he could not know and answer the other party's legal case.

[14] The Claimant's repetition of his request that the purpose of contribution requirements for provincial, federal and private benefit plans is not a ground of appeal under the DESD Act. This argument does not point to the General Division having made any error under the DESD Act.

[15] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. There is no suggestion that it made an error in law.

CONCLUSION

[16] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	K. C., Self-represented
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³ GD2-29

⁴ GD2-19

⁵ General Division decision at para. 7; General Division hearing recording approximate minute 5:30 although the exact time will vary depending on the device used to listen to the recording