



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. O. v Minister of Employment and Social Development*, 2020 SST 143

Tribunal File Number: AD-20-99

BETWEEN:

A. O.

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 20, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] A. O. (Claimant) completed Grade 10, obtained a computer technical support specialist certificate, and a medical degree in Russia. He worked in computer technical support until 2017. He worked as a security guard on an occasional basis after this. The Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled by multiple symptoms resulting from having a pacemaker inserted. He also has plantar fasciitis.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant did not have a severe disability before the end of his minimum qualifying period (MQP – the date by which a claimant must be found to be disabled to receive the disability pension). It also decided that the Claimant was not eligible for the Post-Retirement Disability Benefit.

[4] Leave to appeal this decision to the Tribunal's Appeal Division is dismissed because the appeal does not have a reasonable chance of success on the basis that the General Division made an 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] 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.

ISSUES

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

- a) that the Claimant worked part-time;
- b) That the General Division overlooked or misconstrued the medical evidence;
- c) That the General Division failed to consider new medical evidence

[8] Does the appeal have a reasonable chance of success because the General Division made an error in law when it found that the Claimant was not eligible for the Post-Retirement Disability Benefit?

ANALYSIS

Issue 1: Important factual error

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

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

² DESD Act s. 58(2)

- a) that a finding of fact was made 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.³

[10] The Claimant argues that the General Division made three such errors. First, he says that the General Division based its decision on an important factual error because it referred to his security guard work as part-time when it was a casual position. This is true.⁴ However, the decision was not based on the characterization of the Claimant's job. It was based on the fact that the Claimant worked regularly and as asked in 2017, 2018 and 2019. He made also made a substantially gainful income.

[11] Therefore, the appeal does not have a reasonable chance of success on this basis.

[12] Second, the Claimant argues that the General Division based its decision on an important factual error because it misconstrued the medical evidence. I have read the General Division decision and the documents filed with the Tribunal. It is not necessary for the General Division to mention each and every piece of evidence that is presented to it. It is presumed to have considered all of the evidence.⁵ The General Division explained how it weighed the evidence. The General Division did not overlook or misconstrue any important information. That the Claimant disagrees with how the evidence was weighed is not a ground of appeal under the DESD Act. The appeal does not have a reasonable chance of success on this basis.

[13] Third, the Claimant argues that the General Division based its decision on an important factual error because it did not consider his doctor's note that was dated after the hearing. The General Division cannot be faulted for failing to consider evidence that was not presented to it. This ground of appeal does not have a reasonable chance of success on appeal.

³ *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

⁴ General Division decision at para. 3

⁵ *Simpson v. Canada (Attorney General)*, 2012 FCA 82

Issue 2: Legal error

[14] Another ground of appeal that the Appeal Division can consider is whether the General Division made an error in law. The Claimant argues that it did so because it decided that he was not eligible for the Post-Retirement Disability Benefit although he had not applied for it. However, to be eligible for this benefit, a person must have a MQP after December 2018. The Claimant's MQP is February 28, 2018. Therefore, the General Division did not make an error when it stated that he was not eligible for this benefit. The appeal does not have a reasonable chance of success on this basis.

CONCLUSION

[15] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	A. O., Self-represented
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