Social Security Tribunal of Canada
Tribunal de la sécurité sociale du Canada

Citation: *R. K. v Minister of Employment and Social Development*, 2020 SST 174

Tribunal File Number: AD-20-111

BETWEEN:

R. K.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: February 28, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant formerly worked as a digital tape operator for a TV sports channel. He says that his work environment became increasingly stressful, and he suffered a physical and emotional burnout. He was laid off in 2009 and, although he has undergone retraining in his field, he has not worked since. He is now 62 years old.

[3] In December 2015, the Claimant applied for Canada Pension Plan (CPP) disability benefits, claiming that he could no longer work because of depression, anxiety, panic attacks, seasonal affective disorder, cluster headaches, sleep difficulties, and chronic leg pain.

[4] The Minister refused the application because, in its view, the Claimant had not shown that he suffered from a "severe and prolonged" disability during his minimum qualifying period (MQP), which ended on December 31, 2011.

[5] The Claimant appealed the Minister's refusal to the General Division of the Social Security Tribunal. The General Division dismissed the appeal in November 2018, but the Tribunal's Appeal Division later overturned that dismissal and returned the matter to the General Division for a new hearing.

[6] In November 2019, the General Division held another hearing and again dismissed the appeal, finding, on balance, that the Claimant was not disabled during the MQP. The General Division came to this decision for three reasons: (i) the Claimant did not follow his doctor's recommendation to see a mental health specialist; (ii) there was evidence that the Claimant's conditions improved before December 31, 2011; and (iii) the Claimant completed an intensive program of study after the MQP.

[7] The Claimant has now requested leave to appeal from the Appeal Division for a second time. He alleges that the General Division failed to take into account his testimony explaining the lack of written medical evidence from around the time of his MQP.

[8] I have reviewed the General Division's decision against the underlying record. I have concluded that the Claimant has not advanced any ground of appeal that would have a reasonable chance of success.

ISSUE

[9] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.[1]

[10] An appeal can proceed only if the Appeal Division first grants leave to appeal.[2] At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.[3] This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.[4]

[11] I have to decide whether the Claimant has raised an arguable case.

ANALYSIS

[12] The Claimant maintains that the General Division ignored a significant aspect of his case—that he lacked documented evidence from around the time of his MQP because his medical condition was so severe, he "shut down" and was unable to seek the help that he needed.

[13] I do not see an arguable case on this point.

[14] An administrative tribunal charged with finding fact is presumed to have considered all the evidence before it and does not have to address each and every element of a party's

---

[1] The formal wording for these grounds of appeal is found in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).
[2] DESDA, sections 56(1) and 58(3).
[3] DESDA, section 58(2).
[4] *Fancy v Canada (Attorney General)*, 2010 FCA 63.

submissions in its written reasons.[5] The Claimant testified that he was "overwhelmed" in 2011 and "couldn't think" about seeing specialists for his mental health problems at that time.[6] The General Division may not have referred to this particular statement in its reasons, but that does not necessarily mean it disregarded it.

[15] I should note that the General Division did not base its decision on an absence of evidence as such. Rather, it based its decision on an absence of evidence that the Claimant followed up on a referral to see a psychiatrist. The General Division noted that, although his family doctor referred him to Dr. Majeed in 2011, he did not see this psychiatrist until 2013 or 2014. When he was asked why he had waited several years to seek mental health treatment, the Claimant replied that he could not remember.[7] The General Division, noting that there were no reports on file from Dr. Majeed, found that the Claimant had not offered a reasonable explanation for the delay. For that reason, the General Division found that the Claimant was not compliant with his family doctor's recommendation to seek specialist mental health treatment at a time when it would have presumably done the most good.[8]

[16] In its role as finder of fact, the General Division should be given some leeway in how it assesses the evidence. In this case, I see no reason to interfere with its conclusions.

CONCLUSION

[17] Since the Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.

Member, Appeal Division

REPRESENTATIVE:	R. K., self-represented

[5] *Simpson v Canada (Attorney General)*, 2012 FCA 82.
[6] Recording of General Division hearing at 37:40.
[7] Recording of General Division hearing at 1:36:00.
[8] *Lalonde v Canada (Minister of Human Resources and Development)*, 2002 FCA 211. This is a case that requires disability claimants to mitigate impairment by following reasonable treatment recommendations.