



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. D. v Minister of Employment and Social Development*, 2020 SST 209

Tribunal File Number: AD-18-497

BETWEEN:

G. D.

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: March 5, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant, a former cashier, applied for Canada Pension Plan (CPP) disability benefits in September 2015. At the time of her application, she was 55 years old. She claimed that she could no longer work because of ulcerated feet and blindness in one eye.

[3] The Minister refused the application because, in its view, the Claimant had not shown that she suffered from a “severe and prolonged” disability during her minimum qualifying period (MQP),¹ which it determined had ended on December 31, 1993.

[4] The Claimant appealed the Minister’s refusal to the General Division of the Social Security Tribunal. In September 2018, the General Division dismissed the appeal because it found “insufficient objective medical evidence” of disability during the MQP.²

[5] The Claimant then applied for leave to appeal to the Appeal Division, alleging that the General Division failed to appreciate that her lack of mobility and her impaired vision made it impossible for her to work.³ One of my colleagues on the Appeal Division allowed leave to appeal because she saw an arguable case that the General Division had committed an error of law by requiring objective medical evidence dating from the MQP.

[6] The Minister applied for judicial review of this decision to allow leave to appeal. On February 5, 2020, the Federal Court found the Appeal Division’s decision unreasonable and ordered it set aside. The Court returned to matter to the Appeal Division for redetermination.

¹ The MQP is the period in which a claimant last had coverage for CPP disability benefits. Coverage is established by working and contributing to the CPP.

² General Division decision, paragraph 9.

³ See Claimant’s leave to appeal application dated August 3, 2018 (AD1) and her letter dated May 12, 2019 (AD1A).

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

ISSUE

[8] Under section 58 (1) of the *Department of Employment Social Development Act* (DESDA), 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.⁴

[9] An appeal can proceed only if the Appeal Division first grants leave to appeal.⁵ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁶ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁷

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

ANALYSIS

[11] I have concluded that the Claimant does not have arguable case. In coming to this conclusion, I was guided by the Federal Court of Appeal's recent ruling on this matter.

[12] The General Division dismissed the Claimant's appeal because it found no medical evidence from her MQP in support of her claim that she was disabled before December 31, 1993. I have reviewed the material that was made available to the General Division, and I can confirm that the earliest medical report on file was a letter, dated July 2, 2014,⁸ by Dr. Tracey Brown-Maher, a dermatologist with the Eastern Health Wound Clinic. Dr. Brown-Maher wrote that the Claimant had been diabetic for 14 years and was seen in the clinic for a neuropathic ulcer of her foot that had been ongoing since the previous May. In the medical report that accompanied the

⁴ The formal wording for these grounds of appeal is found in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

⁵ DESDA, sections 56(1) and 58(3).

⁶ DESDA, section 58(2).

⁷ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁸ See GD2-69. I should note that this letter was misdated as "February 7, 2014" in the General Division's decision.

Claimant's CPP disability application, dated August 23, 2016,⁹ Dr. Kelly Smith, family physician, wrote that she had been treating the Claimant for her main conditions (diabetic retinopathy and neuropathy) since December 2013. As the General Division noted, Dr. Brown-Maher's and Dr. Smith's reports, as well as all the other medical evidence in the file, were irrelevant since they referred to the Claimant's condition many years after her CPP disability coverage ended.

[13] The leading case on CPP disability eligibility is *Villani v Canada*. It states that claimants must provide medical evidence that they suffer from a serious and prolonged disability rendering them incapable regularly of pursuing any substantially gainful occupation.¹⁰ *Warren v Canada* says much the same thing—that it is not an error of law to require objective evidence of a disability.¹¹ In this case, the Federal Court of Appeal made it clear that such objective evidence must correlate with the MQP.¹² The Court reiterated its view that medical evidence dated after a claimant's MQP is irrelevant.¹³

[14] The record shows that the Minister specifically asked the Claimant to provide medical documentation from the period before December 31, 1993.¹⁴ She was unable to do so. As trier of fact, the General Division was entitled to draw a rational inference from an absence of objective medical evidence from the relevant period.

[15] In the end, the Claimant's submissions amount to a plea for the Appeal Division to reconsider the evidence and decide in her favour. Unfortunately, I am unable to do so because my authority allows me to determine only whether any of the Claimant's reasons for appealing fall within the three grounds of appeal permitted under section 58(1) of the DESDA and whether any of them have a reasonable chance of success. It is not sufficient for a claimant to merely

⁹ This document was also misdated in the General Division's decision. In paragraph 9, the General Division wrote that the CPP medical report was dated "August 23, 2010." In fact, it was dated "August 23, 2016." I am satisfied that this error did not affect the General Division's reasoning.

¹⁰ *Villani v Canada (Attorney General)*, 2001 FCA 248 at para 50.

¹¹ *Warren v Canada (Attorney General)*, 2008 FCA 377.

¹² *Canada (Attorney General) v Dean*, 2020 FC 206, paragraphs 22-24.

¹³ *Ibid.*, paragraph 27, which cites *Canada (Attorney General) v Hoffman*, 2015 FC 1348.

¹⁴ Minister's letter dated December 23, 2016, GD2-18.

express their disagreement with the General Division's decision, nor is it enough to insist that their health conditions render them disabled within the meaning of the CPP.

CONCLUSION

[16] 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:	G. D., self-represented
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