



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. T. v Minister of Employment and Social Development*, 2020 SST 252

Tribunal File Number: AD-20-134

BETWEEN:

C. T.

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: March 24, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] C. T. (Claimant) applied for a Canada Pension Plan disability pension in May 2018. The Minister of Employment and Social Development refused the application and notified the Claimant of this in a letter dated October 10, 2018. This letter included instructions on how to request reconsideration of this decision and that such a request must be made within 90 days.

[3] The Claimant requested reconsideration of the Minister's decision on May 8, 2019, which is 210 days after the decision was made. This is beyond the time permitted. The Minister refused to extend time for the Claimant to make a reconsideration request.

[4] The Claimant appealed the decision to refuse to extend time to the Tribunal. The Tribunal's General Division dismissed this appeal because it decided that the Minister had acted judicially when it made the decision.

[5] Leave to appeal this decision to the Tribunal's Appeal Division is refused because the Claimant has not presented any grounds of appeal that fall under the Department of Employment and Social Development Act (DESD Act).

ISSUE

[6] Does the appeal have a reasonable chance of success because the General Division failed to consider that the Claimant was continuing to get medical treatment and had applied for a disability tax credit?

ANALYSIS

[7] The 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

[8] 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.

[9] In the Application to the Appeal Division, the Claimant did not present any grounds of appeal that fall under the DESD Act. The Tribunal wrote to him, explained what grounds of appeal the Appeal Division can consider, and asked him to provide this.

[10] The Claimant responded to this letter. He wrote that the General Division failed to provide a fair process because it did not consider that he had ongoing medical appointments, and he was not aware that new evidence would not be considered.³ He also included medical documents and documents related to his application for a disability tax credit.

[11] However, the fact that the Claimant continued to attend medical appointments does not point to the General Division having made any errors under the DESD Act.

[12] The General Division decision sets out that it had to decide whether the Minister exercised its discretion judicially when it decided to refuse to extend time for the Claimant to request reconsideration of its decision to refuse his disability application. It correctly sets out the dates that the Claimant applied for the disability pension, and when he requested reconsideration

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

² DESD Act s. 58(2)

³ AD1B-1

of the Minister’s decision. I have read the General Division decision and reviewed the written record. The General Division did not overlook or misconstrue any important information.

[13] There is also no suggestion that the General Division made an error in law. The law regarding the Minister acting judicially is set out clearly in the decision.⁴ It is applied to the facts before it.

[14] The Claimant argues that the General Division failed to provide a fair process. A fair process requires that parties to an appeal have the opportunity to present their legal case to the Tribunal, to know and answer the other party’s legal case, and to have a decision made by an independent decision maker based on the law and the facts. The Claimant’s argument does not point to any error in this regard. His argument is better framed as an important factual error. It is considered above in that context.

[15] The Claimant also included medical documents and documents related to his application for a disability tax credit. New evidence is not generally permitted on an appeal under the DESD Act.⁵ The Claimant’s evidence does not fall into any exceptions to this rule.

[16] The Claimant has not presented a ground of appeal that falls under the DESD Act.

CONCLUSION

[17] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	C. T., Self-represented
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⁴ General Division decision at para. 7

⁵ *Canada (Attorney General) v. O’Keefe*, 2016 FC 503