



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. F. v Minister of Employment and Social Development*, 2020 SST 257

Tribunal File Number: AD-20-86

BETWEEN:

F. F.

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 26, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] F. F. (Claimant) was injured in a car accident in 2009. In March 2018, she applied for a Canada Pension Plan disability pension and claimed that she was disabled by a number of conditions including depression, anxiety, emotional instability, overactive bladder, and neck, back and shoulder pain.

[3] The Minister of Employment and Social Development approved the application, and decided that the Claimant was disabled in December 2016, fifteen months before she applied for the pension. This is the maximum retroactivity that is permitted under the *Canada Pension Plan*.

[4] The Claimant appealed the Minister's decision regarding when she became disabled to the Tribunal. She claimed that she was incapable of forming or expressing an intention to apply for the pension before she made the application, so she should be found to have been disabled before the period of incapacity began.

[5] The Tribunal's General Division decided that the evidence proved that the Claimant was disabled, but not that she was incapable of forming or expressing an intention to apply for the pension before she did. Therefore, her appeal was dismissed.

[6] The Claimant then applied to have the General Division decision rescinded or amended based on new material facts.¹ The General Division refused this application. It decided that the documents filed as new material facts did not meet the legal test for this.

[7] Leave to appeal this General Division decision is refused. The Claimant has not presented any ground of appeal under the *Department of Employment and Social Development Act* (DESD Act).

¹ *Department of Employment and Social Development Act* s. 66

ANALYSIS

[8] 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.²

[9] 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. 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.

[10] The Claimant's Application to the Appeal Division did not set out any grounds of appeal that fall under the DESD Act. The Tribunal wrote to the Claimant, explained what grounds of appeal can be considered, and asked the Claimant to provide this.

[11] The Claimant responded to this letter. She wrote that her capacity has always been impaired and she had no capacity to apply for the disability pension before she did so. However, this argument was already considered by the General Division. Its repetition is not a ground of appeal under the DESD Act.

[12] The Claimant also refers to her prior family doctor's report dated May 2000, and her current doctor's report dated September 2019, to support her argument that she is not capable of forming or expressing an intention to apply for the pension. Again, these documents were

² This paraphrases the grounds of appeal set out in s. 58(1) of the DESD Act

specifically considered by the General Division when it made its decision.³ The repetition of arguments regarding these documents does not point to the General Division having made an error under the DESD Act.

[13] The Claimant does not suggest that the General Division failed to consider relevant documents, or that it based its decision on a factual error. I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

[14] There is no suggestion that the General Division made an error in law or failed to provide a fair process.

CONCLUSION

[15] The application must be refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

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| REPRESENTATIVE: | V. B., for the Applicant |
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³ General Division decision at paras. 20, 21