



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. V. v Minister of Employment and Social Development*, 2020 SST 270

Tribunal File Number: AD-20-104

BETWEEN:

L. V.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: March 30, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant is a former retail clerk who stopped working in June 2015 after experiencing pain and incontinence. She was diagnosed with a prolapsed (displaced) bladder and, although she has undergone several corrective surgeries, she reports little improvement. She is now 52 years old.

[3] In October 2017, the Claimant applied for Canada Pension Plan (CPP) disability benefits, claiming that she could no longer work because she was incapable of lifting or standing for extended periods.

[4] 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, 2017.

[5] The Claimant appealed the Minister’s refusal to the General Division of the Social Security Tribunal. The General Division held a hearing by teleconference and, in a decision dated November 14, 2019, dismissed the appeal, finding insufficient medical evidence that the Claimant was disabled as of the MQP. The General Division found that some of the Claimant’s conditions, including her fibromyalgia and degenerative disc disease, did not occur until after her MQP. The General Division also noted that the Claimant had undergone a third bladder surgery after her application, with apparently positive results.

[6] On February 14, 2020, the Claimant submitted an application for leave to appeal from the Appeal Division. In it, she asked the Appeal Division to review selected medical reports that she

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.

suggested had been overlooked by the General Division. She also enclosed a letter, dated October 24, 2019, from her family physician, Dr. Brenda Rae Laupland.

[7] The Tribunal asked the Claimant to provide additional written reasons for her appeal. On March 20, 2020, she responded with a letter in which she again asked the Appeal Division to review certain medical reports. This time, she provided a brief summary of each report and explained why it supported her claim that she was incapable regularly of pursuing any substantial gainful occupation as of December 31, 2017.

[8] I have reviewed the General Division's decision against the underlying record. I have concluded that the Claimant has not put forward any grounds 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.²

[10] An appeal can proceed only if the Appeal Division first grants leave to appeal.³ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁵

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

ANALYSIS

[12] The Claimant maintains that the General Division disregarded a number of medical reports that she says support her disability claim. In particular, she alleges that the General

² The formal wording for these grounds of appeal is found in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

³ DESDA, sections 56(1) and 58(3).

⁴ DESDA, section 58(2).

⁵ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Division gave little or no weight to two reports by her gynecologist, Dr. Thom Wroz,⁶ and four reports by her family physician, Dr. Brenda Rae Laupland.⁷

[13] I do not see an arguable case on any of these points. The General Division, in its role as finder of fact, is presumed to have considered all the available evidence, and it cannot be expected to discuss in its written reasons each and every element of a party's submissions.⁸

[14] Although it is true that the General Division did not specifically mention the reports named by the Claimant, they were among many reports prepared by Dr. Wroz and Dr. Laupland that were available in the hearing file. The General Division referred to other reports by both physicians that covered much of the same ground as those that the General Division supposedly ignored. For instance, the General Division summarized Dr. Wroz's report dated December 21, 2017,⁹ which said that the Claimant required surgery for a significant prolapse and could not walk for more than an hour.¹⁰ This report, which was written just before the end of the Claimant's MQP, did not significantly differ from Dr. Wroz's other reports.

[15] Similarly, the General Division did not refer to all of Dr. Laupland's notes and letters, but it did consider three that were prepared in the months following the MQP.¹¹ In substance, these documents varied little from those that the General Division allegedly ignored. The Claimant also argued that the General Division should have given more weight to a fourth document, a letter dated October 24, 2019, in which Dr. Laupland declared her disabled. As it happens, the General Division did discuss this letter in its decision:

The doctor believes the Claimant's multiple issues and particularly her memory concerns, preclude her from work of any sort. I agree with the Claimant's doctor; however, her memory decline, her chronic pain and fatigue, and her diagnoses of degenerative disc disease and fibromyalgia did not occur until after her MQP date of December 31, 2017. The Claimant is required to prove that she was disabled and

⁶ Reports by Dr. Wroz dated October 15, 2015 (GD2-64) and December 21, 2017 (GD2-70).

⁷ Reports by Dr. Laupland dated January 25, 2017 (GD2-88), September 6, 2018 (GD1-8), May 21, 2019 (GD3-19), and October 24, 2019 (GD6-3 and AD1-6).

⁸ *Simpson v Canada (Attorney General)*, 2012 FCA 82.

⁹ See GD2-70.

¹⁰ See General Division decision, paragraph 15.

¹¹ Report by Dr. Laupland dated July 24, 2019 (GD2-51); office notes by Dr. Laupland dated May 1, 2018 (GD2-53) and July 12, 2018 (GD2-52).

unable to maintain any employment on or before her MQP date. At that time, she was dealing only with her incontinence problem.¹²

The General Division cannot be said to have ignored Dr. Laupland's opinion. Rather, it considered the family physician's opinion but decided that it was not worthy of great weight because it was written nearly two years after the MQP. The General Division noted that, before December 31, 2017, the Claimant was dealing only with issues related to her prolapsed bladder, which was later addressed with the surgical insertion of a mesh support. The General Division found that, after December 31, 2017, the Claimant was diagnosed with a number of medical conditions that may have contributed to the post-MQP onset of a disability. This conclusion was, to some extent, confirmed by Dr. Laupland's remark that she had seen a "significant decline in the past two years in terms of her interactions with me."¹³

[16] Although Dr. Laupland declared the Claimant disabled, it must be kept in mind that assessing CPP disability is a legal question as much as it is a medical one, and a physician's opinion is not necessarily the final word on the matter. In deciding whether the Claimant was capable of work during the MQP, the General Division had to consider many factors, including the Claimant's medical conditions, the effect of those conditions on her day-to-day functioning, the effectiveness of the treatments that she had received, and the prospects for her future employability given her age, education, and work experience. Above all, the General Division had to consider whether the presence of disability, if any, occurred before or after the Claimant's MQP. My review of the General Division's decision indicates that it conducted a detailed analysis of the Claimant's condition and the degree to which symptoms associated with her prolapsed bladder affected her capacity to work as of the MQP. In doing so, the General Division found that her third surgery, since it relieved some of her symptoms, would have allowed her to retrain for a less physically demanding job.

[17] The Claimant may not agree with the General Division, but it was within its authority to sort through the evidence, assign weight to it, and make defensible findings of fact.¹⁴ Ultimately, the Claimant is asking me to reassess the evidence and substitute my judgment for the General

¹² General Division decision, paragraph 25.

¹³ Dr. Laupland's letter dated October 24, 2019, GD6-3.

¹⁴ *Simpson, supra*, Note 8.

Division's, I am unable to do so. My authority as an Appeal Division member permits me to determine only whether any of a claimant's reasons for appealing fall within the three specific grounds of appeal and whether any of those reasons have a reasonable chance of success.

[18] I see nothing to suggest that the General Division ignored or mischaracterized evidence when it found that the Claimant was not disabled as of December 31, 2017.

CONCLUSION

[19] 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:	L. V., self-represented
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