



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. L. v Minister of Employment and Social Development*, 2020 SST 338

Tribunal File Number: AD-20-576

BETWEEN:

R. L.

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: April 20, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] R. L. (Claimant) completed high school and obtained a Health Care Aide certificate. He last worked as a hospital service worker part-time from 2010 until January 2014. He applied for a Canada Pension Plan disability pension and claimed that he was disabled by a heart condition, a hernia and hemorrhoids.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant did not have a severe disability before the end of the minimum qualifying period (MQP – the date by which a claimant must be found disabled to be entitled to the disability pension).

[4] Leave to appeal the General Division's decision to the Tribunal's Appeal Division is refused. The Claimant has not presented a ground of appeal under the *Department of Employment and Social Development Act* (DESD Act) on which the appeal has a reasonable chance of success.

PRELIMINARY MATTER

[5] The Claimant did not set out any grounds of appeal when he first contacted the Tribunal and said that he wanted to appeal the General Division decision. The Tribunal wrote to the Claimant, explained what grounds of appeal (reasons for appealing) can be considered under the DESD Act and requested that he provide this. The Claimant responded to this letter, and included grounds of appeal.

ISSUE

[6] Does the appeal have a reasonable chance of success because the General Division made an error in law by considering a definition of "severe" that is too strict?

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 that falls under the DESD Act and on which the appeal has a reasonable chance of success.

[9] The Claimant argues that the General Division failed to observe principles of natural justice/failed to provide a fair process because it considered a definition of "severe" that was too strict. However, the principles of natural justice are concerned with ensuring 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 the decision made by an independent decision maker based on the law and the facts. There is no suggestion that the General Division failed to provide this.

[10] The Claimant's ground of appeal is better framed as an error in law. The Claimant argues that the General Division applied too strict a definition of "severe" when it made its decision. However, the appeal does not have a reasonable chance of success on this basis. The decision sets out the definition of severe that is in the legislation. It says, "A person is considered to have

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

² DESD Act s. 58(2)

a severe disability if incapable regularly of pursuing any substantially gainful occupation.”³ The decision also explains that the definition of severe relates to a person’s capacity to work at any substantially gainful occupation and not just their regular job. It examined the evidence, including that the Claimant continued to work for over one year after the MQP and that he had not attempted any lighter work duties. It concluded that the Claimant retained some capacity for substantially gainful work after the MQP.

[11] The Claimant also argues that the General Division’s statement that the deterioration in his condition after the MQP was not relevant was also an error. However, the General Division had to decide whether the Claimant was disabled before the end of the MQP (which in this case was December 31, 2012, or a possible prorated date of January 31, 2013). While it is unfortunate that the Claimant’s condition deteriorated after the MQP, this cannot be relied on to conclude that the Claimant was disabled before the end of the MQP. The appeal does not have a reasonable chance of success on this basis.

CONCLUSION

[12] Leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	R. L., Self-represented
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³ General Division decision at para. 6