



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. K. v Minister of Employment and Social Development*, 2020 SST 473

Tribunal File Number: AD-20-632

BETWEEN:

H. K.

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: June 4, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] H. K. (Claimant) ran an esthetics business. In 2010, she fell and broke both wrists. She applied for a Canada Pension Plan disability pension and says that she is disabled by ongoing wrist and body pain resulting from broken wrists, bad knees, depression and anxiety.

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

[4] The Claimant now applies for leave/permission to appeal the General Division decision to the Tribunal's Appeal Division. Leave to appeal is refused because the Claimant has not presented a ground of appeal that the Appeal Division can consider.

PRELIMINARY MATTER

[5] The Claimant did not set out any grounds of appeal that the Appeal Division can consider in the Application to the Appeal Division. The Tribunal wrote to the Claimant and explained what grounds of appeal can be considered and asked her to provide this. The Claimant responded. Her response is considered below.

ANALYSIS

[6] An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division 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

[7] However, before I can decide an appeal, I must decide whether to grant leave (permission) to appeal. 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 list of grounds of appeal that can be considered and on which the appeal has a reasonable chance of success.

[8] The Claimant wrote in the Application to the Appeal Division that she is physically and mentally incapable of work, and is being penalized for not taking advantage of the health care system by taking medications. However, the General Division decision does not criticize the Claimant for this. Rather, the decision states that there was very little medical evidence to support her legal claim that she was disabled at the end of the MQP (December 31, 2013).

[9] In addition, the Claimant says that she refused to take medication because she was concerned about its addictive effects. The General Division considered this.³ Therefore, this ground of appeal does not point to any error by the General Division and leave to appeal cannot be granted on this basis.

[10] The Claimant also wrote that she was denied the disability pension because she said that she is smart. The General Division considered all of the Claimant's personal characteristics, that she ran her own business before she injured her wrists in 2010,⁴ and that she worked as a cook on a part-time basis for a few months from 2017 to 2018 and did not leave this job due to her health.⁵ This ground of appeal also does not point to the General Division having made an error. Therefore, leave to appeal cannot be granted on this basis.

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

² Department of Employment and Social Development Act s. 58(2)

³ General Division decision at para. 28

⁴ General Division decision at para. 4

⁵ General Division decision at para. 33

[11] In response to the letter from the Tribunal that requested grounds of appeal, the Claimant wrote that the General Division did not follow a fair process, it made an error in law and based its decision on an important factual error. She did not, however, explain how the General Division made any of these errors. Without some explanation of these errors, I cannot conclude that the appeal has a reasonable chance of success based on these grounds of appeal.

[12] I have read the General Division decision and reviewed the written record. The General Division did not overlook or misconstrue any important information.

CONCLUSION

[13] Therefore, leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	H. K., Self-represented
------------------	-------------------------