



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. S. v Minister of Employment and Social Development*, 2020 SST 474

Tribunal File Number: AD-20-643

BETWEEN:

D. S.

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 5, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] D. S. (Claimant) began to receive a Canada Pension Plan retirement pension in January 2016. In July 2018, he applied for a Canada Pension Plan disability pension.

[3] The Minister of Employment and Social Development refused the disability pension application because it was made more than 15 months after the Claimant began to receive the retirement pension. The *Canada Pension Plan* says that a person cannot replace a retirement pension with a disability pension more than 15 months after they begin to receive the retirement pension.

[4] The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division dismissed the appeal for the same reason.¹

[5] Leave to appeal to the Tribunal's Appeal Division is refused because the Claimant has not presented a ground of appeal that the Appeal Division can consider and upon which the appeal has a reasonable chance of success.

ISSUE

[6] Does the appeal have a reasonable chance of success based on any of the grounds of appeal presented by the Claimant?

ANALYSIS

An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only decide whether the General Division:

- a) failed to provide a fair process;

¹ See appendix to General Division decision

- 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

[7] However, before it can decide an appeal, the Appeal Division 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.³ Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

[8] In a lengthy document filed in support of his application for leave to appeal, the Claimant wrote that the General Division made some factual errors. First, he says that the General Division erred when it stated that he can drive a vehicle.⁴ He says that while he can drive, he does not have a license to do so. This statement acknowledges that the General Division statement that he can drive is correct. Therefore, this is not a ground of appeal upon which the appeal has a reasonable chance of success.

[9] The Claimant also wrote that the General Division member took information from wrong sources. However, it is not for the General Division to seek out evidence in any case. It is for the parties to present evidence to the General Division. They decide where the evidence comes from. It is for the General Division to receive all of the parties' evidence, weigh it and make a decision based on the law and the facts. This argument is also not a ground of appeal upon which the appeal has a reasonable chance of success.

[10] In addition, the Claimant is critical of the General Division for making its decision based on the law without considering any extenuating circumstances. However, the General Division must do this. All decision makers at the Tribunal must apply the law and cannot bend the

² This paraphrases the grounds of appeal set out in s. 58(1) of the Department of Employment and Social Development Act

³ Department of Employment and Social Development Act s. 58(2)

⁴ General Division decision at para. 14

requirements.⁵ A decision cannot be made based on empathy or extenuating circumstances. Therefore, this ground of appeal does not have a reasonable chance of success.

[11] The Claimant's written request for leave to appeal is lengthy. The remainder of the documents are incomprehensible. The Federal Court states that a ground of appeal does not have a reasonable chance of success if it is not clear.⁶ Therefore, leave to appeal cannot be granted on any of the Claimant's remaining 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] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	D. S., Self-represented
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⁵ *Miter v. Canada (Attorney General)*, 2017 FC 262

⁶ *Pantic v. Canada (Attorney General)*, 2011 FC 591