



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. C. v Minister of Employment and Social Development*, 2020 SST 475

Tribunal File Number: AD-20-647

BETWEEN:

**L. C.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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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] L. C. (Claimant) worked for many years in the restaurant business. He stopped working when he became depressed after a disagreement with his business partners. He recovered from this, and was later injured in a car accident.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled as a result of the car accident.<sup>1</sup> He stopped working in September 2014. The Minister of Employment and Social Development refused the application. It decided that the Claimant was not disabled before the end of the minimum qualifying period (MQP – the date by which a claimant must be found to be disabled in order to receive the disability pension). The Claimant's MQP is December 31, 2000.

[4] The Claimant appealed the Minister's decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It also decided that the Claimant's MQP ended on December 31, 2000 and that the Claimant was not disabled by this date.

[5] Leave to appeal this decision to the Tribunal's Appeal Division is refused. The appeal does not have a reasonable chance of success on the basis that the General Division made an error in law or based its decision on an important factual error.

### ISSUES

[6] Does the appeal have a reasonable chance of success because the General Division based its decision on an important factual error because it failed to consider all of the evidence regarding the Claimant's contributions to the *Canada Pension Plan*?

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<sup>1</sup> GD2-102

[7] Does the appeal have a reasonable chance of success because the General Division made an error in law?

## **ANALYSIS**

An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only intervene if 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.<sup>2</sup>

[8] 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.<sup>3</sup> 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.

### **The Claimant's contributions to the *Canada Pension Plan***

[9] To be eligible to receive a Canada Pension Plan disability pension a person must have made sufficient contributions to the Plan for a minimum number of years over a specified period of time. This is called the MQP. Based on the Claimant's earnings and contributions, the General Division decided that his MQP ended on December 31, 2000.

[10] When the Claimant appealed the Minister's decision refusing his disability application, he argued that his income and pension contributions in 2013, 2014 and 2015 should have been considered, and this would have changed the end of his MQP. This is set out in the General Division decision.<sup>4</sup> It is the Canada Revenue Agency (CRA) that decides when and how much a

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

<sup>3</sup> Department of Employment and Social Development Act s. 58(2)

<sup>4</sup> General Division decision at para. 5

person has contributed to the Plan. The General Division put the appeal on hold so the Claimant could apply to CRA for a revision of his record of earnings, After a review, there was no change in the Claimant's contributions.<sup>5</sup>

[11] In his application to the Appeal Division, the Claimant argues that the General Division failed to provide a fair process because it failed to consider his contributions to the Plan in 2013, 2014 and 2015. The obligation to provide a fair process means that the General Division must ensure that all 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 a 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.

[12] The Claimant's argument is better framed as the General Division having based its decision on an important factual error. In order to succeed on appeal on the basis of the General Division having based its decision on an important factual error, the Claimant has to prove three things:

- a) that a finding of fact was erroneous (in error);
- b) that the finding was made perversely, capriciously, or without regard for the material that was before the General Division; and
- c) that the decision was based on this finding of fact.<sup>6</sup>

[13] The General Division decision refers to the Claimant's argument that his additional earnings should be considered. It also correctly states that it is CRA and not the Tribunal that decides what a Claimant's earnings and contributions have been. Their decision is binding on the Tribunal.<sup>7</sup> This means that the Tribunal must follow their ruling. That the Claimant disagrees with CRA's decision does not point to the General Division having made an important factual error. The appeal does not have a reasonable chance of success on this basis.

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<sup>5</sup> Ibid.

<sup>6</sup> Department of Employment and Social Development Act s. 58(1)(c)

<sup>7</sup> General Division decision para.5

[14] In addition, the Claimant made this same argument before the General Division. Its repetition does not point to any error that the Appeal Division can consider.

**Error in law**

[15] The Claimant also says that the Minister did not follow the law. He did not explain how it did so. This bald statement does not point to the General Division having made an error. The appeal does not have a reasonable chance of success on this basis.

[16] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. There is no suggestion that it made an error in its jurisdiction, or failed to provide a fair process.

**CONCLUSION**

[17] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	L. C., Self-represented
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