



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. W. v Minister of Employment and Social Development*, 2020 SST 505

Tribunal File Number: AD-20-85

BETWEEN:

**C. W.**

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 17, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal is refused.

### **OVERVIEW**

[2] C. W. (Claimant) worked as a cashier for the same employer for 40 years. She stopped working because of pain due to osteoporosis in her neck, back, arms and legs. She applied for a Canada Pension Plan disability pension and claimed that she was disabled by this condition and her limitations.

[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 despite the Claimant's limitations she retained some capacity regularly to pursue a substantially gainful occupation.

[4] Leave to appeal the General Division's decision to the Tribunal's Appeal Division is refused. The appeal does not have a reasonable chance of success on the basis of the General Division having based its decision on an important factual error regarding the family doctor's evidence.

### **ISSUE**

[5] Does the appeal have a reasonable chance of success because the General Division based its decision on an important factual error regarding her family doctor's evidence?

### **ANALYSIS**

[6] 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;
- 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>1</sup>

[7] However, the Claimant must first obtain leave (permission) to appeal. Leave to appeal must be refused if the appeal does not have a reasonable chance of success.<sup>2</sup> Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for

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

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

appealing) that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

[8] The Claimant argues that the General Division based its decision on an important factual error regarding her family doctor's evidence. She says that although her doctor says that she can still work, she cannot.

[9] The General Division summarized all of the evidence that was presented to it. This includes

- a) that the Claimant says that she is disabled and cannot work,<sup>3</sup>
- b) that the family doctor noted that her increased pain was affecting her ability to complete cashier duties,<sup>4</sup> and
- c) that although the Claimant has a number of limitations, they do not prevent her from doing all types of work,<sup>5</sup>

[10] The General Division weighed all of the evidence to make its decision. It did not overlook or misconstrue any important information. The appeal does not have a reasonable chance of success on the basis that the General Division made an important factual error.

[11] There is no suggestion that the General Division made an error in law or failed to provide a fair process.

## **CONCLUSION**

[12] Leave to appeal is refused.

Valerie Hazlett Parker

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<sup>3</sup> General Division decision at para. 12

<sup>4</sup> General Division decision at para. 17

<sup>5</sup> General Division decision at para. 21

Member, Appeal Division

REPRESENTATIVES:	C. W., Self-represented
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