



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *J. M. v Minister of Employment and Social Development*, 2020 SST 588

Tribunal File Number: AD-20-660

BETWEEN:

**J. M.**

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: July 6, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal is refused.

### **OVERVIEW**

[2] J. M. (Claimant) was hospitalized for a long time in 1996, and had toes amputated. He also has Becker Muscular Dystrophy which results in fatigue. Despite this he worked as an auto detailer until he was laid off in 2016. The Claimant then applied for a Canada Pension Plan disability pension and claimed that he was disabled as a result of his conditions.

[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 although the Claimant has medical conditions he still had capacity regularly to pursue a substantially gainful occupation.

[4] The Claimant's application for leave (permission) to appeal the General Division's decision to the Tribunal's Appeal Division is refused. The Claimant has not presented a ground of appeal (reason for appealing) upon which the appeal has a reasonable chance of success.

### **ISSUES**

[5] Does the appeal have a reasonable chance of success because:

- a) The General Division failed to contact the Claimant's doctors; or
- b) The Claimant provided new medical information?

### **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, a claimant must first obtain leave (permission) to appeal. Leave to appeal to the Appeal Division 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 appealing) that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

[8] When the Claimant wrote to the Tribunal and stated that he wanted to appeal the General Division decision to the Tribunal's Appeal Division he did not include any grounds of appeal that the Appeal Division can consider. The Tribunal wrote to the Claimant, explained what grounds of appeal it can consider, and asked the Claimant to provide this. The Claimant responded. He wrote that the General Division had not reviewed the evidence fairly, and failed to contact his doctors.

[9] The General Division is an impartial decision maker. As such, it cannot assist any party in presenting its case. It cannot contact anyone of behalf of a party to obtain information. It is for each party to gather evidence that will help their case, and present it to the General Division. The fact that the General Division failed to contact the Claimant's doctor does not point to it having made any error. Therefore, leave to appeal cannot be granted on this basis.

[10] The Claimant also provided an additional letter from his doctor, a document related to the genetic testing he had and a scholarly article about his muscular dystrophy. This may be new evidence. The Federal Court of Appeal stated that new evidence is not generally accepted on an

---

<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)

appeal to the Appeal Division.<sup>3</sup> This evidence does not fall within any exception to this rule. Therefore, leave to appeal cannot be granted on the basis of its presentation.

[11] In addition, the General Division decision summarizes medical evidence about the Claimant's muscular dystrophy and its impact on his capacity to do physical work. I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

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

**CONCLUSION**

[13] Leave to appeal is therefore refused.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVES:	J. M., Self-represented
------------------	-------------------------

---

<sup>3</sup> Canada (Attorney General) v. O'Keefe, 2016 FC 503