



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. K. v Minister of Employment and Social Development*, 2020 SST 609

Tribunal File Number: AD-20-676

BETWEEN:

S. K.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: July 16, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] The Claimant is a former retail sales worker who suffers from depression, anxiety, and migraine headaches. She was last employed in December 2016 and is now 43 years old.

[3] In December 2017, the Claimant applied for Canada Pension Plan (CPP) disability benefits, claiming that she no longer had the energy or motivation to work. The Minister refused the application because, in its view, the Claimant had not shown that she had a severe and prolonged disability, as defined by the *Canada Pension Plan*.

[4] The Claimant appealed the Minister's refusal to the Social Security Tribunal's General Division. The General Division held a hearing by teleconference and, in a decision dated March 25, 2020, dismissed the appeal, finding insufficient medical evidence that the Claimant was disabled as of her minimum qualifying period (MQP),¹ which ended on December 31, 2019. In particular, the General Division found that the Claimant had not received a level of treatment to suggest a significant mental health condition.

[5] On June 11, 2020, the Claimant submitted an application requesting leave to appeal from the Appeal Division. In it, she alleged that the General Division ignored the opinions of her treating physicians when it found that she did not suffer from a severe impairment. She stated that she was experiencing marital difficulties and found it difficult to leave her bedroom. She asked the Appeal Division to further examine her claim.

[6] The Tribunal then sent a letter reminding the Claimant that the Appeal Division can only look at specific errors on the part of the General Division. The Tribunal asked the Claimant to

¹ The MQP is the period in which a claimant last had coverage for CPP disability benefits. Coverage is established by working and contributing to the CPP.

provide further reasons why she was appealing. On July 9, 2020, the Claimant replied, alleging that the General Division failed to consider the extent of her major depressive disorder. She referred the Appeal Division to Dr. Greenwood's report, which said that talk therapy and medication adjustments had done little to improve her condition.

[7] I have reviewed the General Division's decision against the underlying record. I have concluded that the Claimant has not advanced any grounds that would have a reasonable chance of success on appeal.

ISSUE

[8] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.²

[9] An appeal can proceed only if the Appeal Division first grants leave to appeal.³ At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.⁴ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁵

[10] I have to decide whether the Claimant has an arguable case.

ANALYSIS

[11] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the three grounds of appeal permitted under the law.

² The formal wording for these grounds of appeal is found in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

³ DESDA, sections 56(1) and 58(3).

⁴ DESDA, section 58(2).

⁵ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[12] The Claimant argues that the General Division dismissed her appeal in the face of medical evidence showing that she suffers from disabling depression. I do not see a reasonable chance of success for this argument. In its role as fact finder, the General Division is entitled to some leeway in how it chooses to weigh the evidence. My review of its decision indicates that the General Division meaningfully analyzed the available information and came to the defensible conclusion that the Claimant did not have a condition that prevented her from regularly pursuing a substantially gainful occupation. In particular, the General Division found that the Claimant's depression was situational and had arisen in response to a family crisis. The General Division noted that, after five months of psychological counselling, the Claimant did not seek further treatment for more than a year, other than "talk therapy" from her family physician. When the Claimant started seeing another psychologist in September 2018, her visits were irregular and few. The General Division concluded that the Claimant had not received the kind of intensive and continuous treatment that would indicate a severe mental health condition.

[13] The Claimant suggests that the General Division should have paid more attention to the medical evidence, such as Dr. Jamieson's June 2019 opinion that she needed more treatment and could not return to work for the foreseeable future. However, the General Division addressed this opinion in its written reasons, noting the psychologist's implication that the Claimant might be able to return to work once she received appropriate treatment. In any event, the Claimant should be aware that a doctor's word is not conclusive in these kinds of cases. Disability, as defined under the *Canada Pension Plan* is a legal question as much as it is a medical question.

[14] While the General Division did not arrive at the conclusion the Claimant would have preferred, I cannot, as a member of the Appeal Division, reassess the evidence and make my own determination of whether the Claimant is disabled or not. Instead, my role is to determine whether the General Division's decision is defensible on the facts and the law. An appeal to the Appeal Division is not an opportunity for an applicant to re-argue their case and ask for a different outcome. My authority permits me to determine only whether any of the Claimant's reasons for appealing fall within the specified grounds of appeal and whether any of them have a reasonable chance of success.

CONCLUSION

[15] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, the application for leave to appeal is refused.



Member, Appeal Division

REPRESENTATIVE:	Tre'Vien Teer, for the Applicant
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