



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. M. v Minister of Employment and Social Development*, 2020 SST 684

Tribunal File Number: AD-20-730

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: August 7, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] J. M. (Claimant) completed Grade 11 and training to be a real estate agent. She has worked in a number of different jobs. She last worked as a real estate agent while she also operated a horse farm with her partner.

[3] The Claimant applied for a Canada Pension Plan disability pension and said that she was disabled by a number of conditions, including fibromyalgia, depression, restless leg syndrome, lower back disc bulge and menopause. The Minister of Employment and Social Development refused the application. It decided that despite her medical conditions, the Claimant's disability was not severe under the *Canada Pension Plan*.

[4] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. It also decided that the Claimant's disability was not severe at the end of the minimum qualifying period (MQP – the date by which a claimant must prove that they are disabled in order to receive the disability pension).

[5] Leave to appeal the General Division decision is refused. The appeal does not have a reasonable chance of success on the basis that the General Division based its decision on an important factual error.

ISSUE

[6] Does the appeal have a reasonable chance of success because the General Division based its decision on an important factual error that her condition was not severe?

ANALYSIS

[7] 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.¹

[8] 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.² 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.

[9] The Claimant says that leave to appeal should be granted because the General Division based its decision on an important factual error that her disability was not severe. In order to succeed on appeal on this basis, the Claimant will have to prove three things:

- a) That a finding of fact was made 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.³

[10] The Claimant says that she had fibromyalgia and depression before the end of the MQP and these conditions have not improved with treatment. In addition, she says that the medical evidence shows that her condition has deteriorated since the end of the MQP (the Claimant's MQP ended on December 31, 2014).

[11] The General Division decision states that the Claimant's main medical conditions in 2014 were fibromyalgia, depression and carpal tunnel syndrome.⁴ The General Division examined the

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

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

³ *Department of Employment and Social Development Act* s. 58(1)(c)

⁴ General Division decision para. 9

evidence for each of these conditions as well as her other conditions.⁵ Based on the written evidence and the Claimant's testimony, the General Division found as fact that each condition was not severe. For example, the decision states that the Claimant testified that

- a) she was dizzy and sleeping and in pain all the time in 2014,⁶
- b) she had trouble putting on clothes and had a trigger thumb;⁷and
- c) her depression was really bad at that time and she tried different medications.⁸

The General Division decision also states that this testimony was not supported by the medical evidence. For example, the decision states that the Claimant reported to her doctor that she felt better taking a higher dose of Lyrica.⁹ Therefore, there was an evidentiary basis for its finding of fact that the Claimant's disability was not severe. The appeal does not have a reasonable chance of success on this basis.

[12] The Claimant also wrote in the application to the Appeal Division that she would provide additional medical reports from specialists once she receives them. However, the promise to present additional evidence is not a ground of appeal that the Appeal Division can consider. Leave to appeal cannot be granted on this basis.

[13] 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 law or failed to provide a fair process.

CONCLUSION

[14] Leave to appeal must therefore be refused.

⁵ Fibromyalgia at para. 10-15 of the decision; wrist pain at paras. 16-17, depression at paras. 18-22 and other conditions at paras. 23-24.

⁶ General Division decision at para. 10

⁷ General Division decision at para. 16

⁸ General Division decision at para. 18

⁹ General Division decision at paras. 11, 17

Valerie Hazlett Parker
Member, Appeal Division

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