



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *SS v Minister of Employment and Social Development*, 2020 SST 857

Tribunal File Number: AD-20-790

BETWEEN:

**S. S.**

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: October 7, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal is refused.

### **OVERVIEW**

[2] S. S. completed approximately two years of high school before she joined the paid workforce. She worked in a factory, and raised her children. In 2011, she stayed home to care for a relative who had dementia. This person passed away in 2018. The Claimant was diagnosed with cancer and underwent chemotherapy and radiation treatment after this.

[3] The Claimant applied for a Canada Pension Plan disability pension and claimed that she was disabled by limitations that resulted from cancer treatment. She also has migraine headaches. 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 there was not enough evidence to prove that the Claimant had a severe disability before the end of the minimum qualifying period (MQP – the date by which a claimant must be found to be disabled to receive the disability pension). The Claimant's MQP ends on December 31, 1997.

[4] Leave to appeal the General Division decision to the Tribunal's Appeal Division is refused. The appeal does not have a reasonable chance of success on the basis that the Tribunal should change the law.

### **ISSUE**

[5] Does the appeal have a reasonable chance of success because the General Division may have made a reviewable error?

[6] Does the appeal have a reasonable chance of success because the Appeal Division should change the law?

## ANALYSIS

### **There must be a reviewable error**

[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.<sup>1</sup>

[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.<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.

[9] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. The Claimant does not say that the General Division made any such error. 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.

[10] The Claimant also does not say that the General Division made an error in law or failed to provide a fair process. Nothing in the written record indicates that any such errors may have been made. Consequently the appeal does not have a reasonable chance of success on these bases either.

[11] Therefore, leave to appeal cannot be granted on the basis that the General Division made a reviewable error.

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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)

**The Appeal Division cannot change the law**

[12] The General Division had to decide whether the Claimant was disabled on or before December 31, 1997, the end of her MQP. The MQP is calculated based on when a person works and makes contributions to the Canada Pension Plan from their earnings. The Claimant did not have paid work from 2011 to 2018 because she provided ongoing care for a relative who had dementia. Accordingly, she made no contributions to the Canada Pension Plan during this time.

[13] The Claimant argues that the *Canada Pension Plan* should change its contribution requirements for those who give up paid work to care for the elderly, and urges the Appeal Division to make this change. However, the Tribunal is created by legislation.<sup>3</sup> As such, it only has the legal authority given to it in the legislation. It has no power to change the *Canada Pension Plan*, nor to make decisions based on compassionate grounds or extenuating circumstances. It cannot bend the requirements of this complex contributory social benefits scheme.<sup>4</sup> Therefore, leave to appeal cannot be granted on this basis.

**CONCLUSION**

[14] Leave to appeal is refused.

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	S. S., Self-represented
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<sup>3</sup> *The Department of Employment and Social Development Act*

<sup>4</sup> *Miter v. Canada (Attorney General)*, 2017 FC 262