



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *AG v Minister of Employment and Social Development*, 2020 SST 925

Tribunal File Number: AD-20-763

BETWEEN:

**A. G.**

Applicant  
(Claimant)

and

**Minister of Employment and Social Development**

Respondent  
(Minister)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Neil Nawaz

Date of Decision: October 27, 2020

## DECISION AND REASONS

### DECISION

[1] Leave to appeal is refused.

### OVERVIEW

[2] The Claimant was sexually abused as a child and silently lived with this trauma until 2012, when he sought help from his family doctor. Other than a short-lived job as a corporate manager that ended in 2010, he spent nearly all of his career working for his family's business.

[3] In April 2018, the Claimant applied for a Canada Pension Plan (CPP) disability pension claiming that he could no longer work because of depression, anxiety, and post-traumatic stress syndrome (PTSD). The Minister approved application with a first payment date of May 2017, which it determined was the maximum period of retroactivity permitted under the law.

[4] The Claimant appealed the Minister's determination of his pension's start date to the General Division of the Social Security Tribunal. He said that he had been incapacitated from making an application any earlier than April 2018.

[5] The General Division held a hearing by teleconference and, in a decision dated June 8, 2020, dismissed the appeal. The General Division found that the Claimant's condition, and his activities in the months and years leading up to April 2018, did not suggest that he was incapable of forming or expressing an intention to make an application before that date.

[6] The Claimant is now applying for leave to appeal from the Appeal Division.<sup>1</sup> He disagrees with the General Division's decision and maintains that he stopped working in 2010 because he suddenly became overwhelmed with previously repressed memories of sexual abuse. He asked the Tribunal to reconsider its decision and grant him disability benefits retroactive to 2010.

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<sup>1</sup> Claimant's application requesting leave to appeal from the Appeal Division dated August 27, 2020, AD1.

[7] The Claimant followed up his application for leave to appeal with a package of medical records, accompanied by a detailed summary of those records.<sup>2</sup> From what I can determine, little or none of this material was available to the General Division when it heard the Claimant's appeal.

[8] The Tribunal then sent two letters to the Claimant. The first letter reminded the Claimant that the Appeal Division can only look at specific errors on the part of the General Division and asked him to provide further reasons why he was appealing. The second letter informed the Claimant that he had submitted what appeared to be fresh evidence, which the Appeal Division cannot ordinarily consider. The letter advised the Claimant that he had to right to submit an application to rescind or amend the General Division's decision on the basis of new facts. Both letters established a common deadline of October 16, 2020 for additional submissions.<sup>3</sup>

[9] To date, the Tribunal has not heard from either the Claimant or his authorized representative.

[10] I have now 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**

[11] There are three grounds of appeal to the Appeal Division. A claimant must show that the General Division (i) did not follow procedural fairness or made an error of jurisdiction; (ii) made an error of law; or (iii) made an important error of fact.<sup>4</sup>

[12] An appeal can proceed only if the Appeal Division first grants leave to appeal.<sup>5</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>6</sup>

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<sup>2</sup> Claimant's submissions dated September 2, 2020, AD1B.

<sup>3</sup> The Tribunal advised the Claimant that, if he signalled his intention to make an application to rescind or amend the General Division's decision by the specified deadline, it would place his application for leave to appeal on hold until the General Division had decided whether to consider his new evidence.

<sup>4</sup> Section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>5</sup> DESDA, sections 56(1) and 58(3).

<sup>6</sup> DESDA, section 58(2).

This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.<sup>7</sup>

[13] I have to decide whether the Claimant has raised an arguable case that falls under one or more of the permitted grounds of appeal.

## **ANALYSIS**

[14] 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 committed 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.

[15] The Claimant argues that the General Division dismissed his appeal despite medical evidence indicating that he was "incapable of forming or expressing an intention to make an application"<sup>8</sup> before April 2018.

[16] I do not see a reasonable chance of success for this argument. In its role as fact finder, the General Division is entitled to a degree of deference in how it chooses to weigh the evidence. My review of its decision indicates that the General Division meaningfully analyzed the information available to it and came to the defensible conclusion that, more likely than not, the Claimant was capable of forming or expressing an intention to apply for a CPP disability pension before April 2018, the month in which he finally did submit his application. In particular, the General Division placed weight on evidence that the Claimant managed his own medical care between 2010 and 2018 and, during the same period, pursued legal action to hold his abusers accountable.

[17] I want to emphasize that, under the *Canada Pension Plan*, disability and incapacity are two different concepts. One is an inability to regularly pursue a substantially gainful occupation; the other is an inability to form or express an intention to make an application for disability benefits. The first is generally much harder to prove than the second. While the Claimant has long suffered from PTSD and other debilitating psychological conditions, that does not mean that

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<sup>7</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>8</sup> This is the legal standard for incapacity, as set out in section 60(8) of the *Canada Pension Plan*.

he met the relatively heavy burden of proving that he could not form or express an intention to apply for benefits.

[18] While the General Division did not arrive at the conclusion the Claimant would have preferred, it is not my role, as a member of the Appeal Division, to reassess the evidence but to determine whether the 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**

[19] 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.



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Member, Appeal Division

REPRESENTATIVE:	P. P., for the Claimant
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