



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *TS v Minister of Employment and Social Development*, 2020 SST 921

Tribunal File Number: AD-20-811

BETWEEN:

T. S.

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: October 26, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] T. S. (Claimant) last worked as a machine operator. He applied for a Canada Pension Plan credit and claimed that he was disabled by a number of conditions, including high blood pressure, heart palpitations, chest pain, diabetes, and heartburn. The Minister of Employment and Social Development approved the application, and decided that payment would begin 15 months before the application date. This is the maximum retroactivity allowed.¹

[3] The Claimant appealed the Minister's decision regarding when payment was to begin to the Tribunal. He claimed that he was incapable of forming or expressing an intention to make the application before he did so. The Tribunal's General Division dismissed the appeal. It decided that the Claimant was not so incapable.

[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.

ISSUE

[5] Does the appeal have a reasonable chance of success because the General Division failed to properly consider the evidence that supports the Claimant's legal position?

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;

¹ Canada Pension Plan s. 42(2)(b)

- 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.²

[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.³ 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] The General Division must provide parties with a fair process. This means that all parties must have the opportunity to present their legal case, to know and answer the other party's legal case and to have a decision made by an impartial decision maker. If a party is not permitted to file all of their evidence, the process may be unfair.

[9] In the Application to the Appeal Division the Claimant wrote that he did not get a chance to submit all of his documents. All parties to an appeal to the General Division have 365 days after an appeal is filed to submit documents, or notify the Tribunal that they are ready to proceed. The Claimant notified the Tribunal that he was ready to proceed before the hearing date was set. He did not say that he had additional documents to present. The General Division decision does not indicate that the Claimant had additional evidence to present.

[10] The appeal does not have a reasonable chance of success on the basis that the Claimant was unable to present all of his evidence to the Tribunal.

[11] The Claimant also wrote in the Application to the Appeal Division that the General Division did not consider all of his health conditions and records. I have read the General Division decision and reviewed the written record. The General Division did not overlook or misconstrue any important information. It is not necessary for the General Division decision to

² This summarizes the ground of appeal set out in the Department of Employment and Social Development Act s. 58(1)

³ Department of Employment and Social Development Act s. 58(2)

refer to each and every piece of evidence that is presented to it. It is presumed to have considered all of it.⁴ Therefore, the appeal does not have a reasonable chance of success on this basis.

[12] There is no suggestion that the General Division made an error in law.

CONCLUSION

[13] Leave to appeal is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVES:	T. S., Self-represented
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⁴ Simpson v. Canada (Attorney General), 2012 FCA 82