



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *CP v Minister of Employment and Social Development*, 2020 SST 927

Tribunal File Number: AD-20-816

BETWEEN:

C. P.

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 28, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] C. P. (Claimant) first applied for a Canada Pension Plan disability pension in 2010, and said that he was disabled by physical and mental health injuries from a vehicle accident. The Minister of Employment and Social Development refused the application. The Claimant requested reconsideration of this decision after the time permitted to do so. The Minister refused to reconsider its decision for this reason. The Claimant appealed the Minister's decision to refuse to reconsider the application to the Tribunal. The Tribunal's General Division dismissed the appeal.

[3] The Claimant again applied for a Canada Pension Plan disability pension in 2018, and said that he was disabled as a result of the accident. The Minister of Employment and Social Development granted the application. It decided that the Claimant was disabled 15 months before the date of this application. The Claimant appealed the decision regarding the date that he became disabled to the Tribunal. He says that he was incapable of forming or expressing an intention to make the application before he did so in 2018, and was disabled before then. The Tribunal's General Division dismissed this appeal. It decided that the Claimant was not so incapable.

[4] Leave to appeal this General Division decision to the Tribunal's Appeal Division is dismissed. 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 regarding the reconsideration decision for the 2010 application.

ISSUE

[5] Does the appeal have a reasonable chance of success because the General Division based its decision on an important factual error about the first reconsideration decision?

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;
- 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

[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.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.

[8] The Claimant says that the General Division based its decision on an important factual error. To succeed on appeal on this basis, he will have to prove three things:

- a) that a finding of fact was erroneous (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

[9] The Claimant says that the important factual error was the General Division's statement that the reconsideration request regarding the 2010 application was made on time but the Minister lost the request, and the Tribunal was not persuaded by this argument.⁴ He presented

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. 68(1)(c)

⁴ General Division decision at para. 9

letters from the Minister and his counsel to show that he had requested reconsideration within the time permitted.

[10] However, the appeal does not have a reasonable chance of success on the basis that this was an error. In the decision, the General Division sets out the procedural history of the Claimant's applications. This includes a statement that the Claimant's representative explained that the Minister lost the reconsideration request regarding his 2010 application, and the Tribunal was not persuaded by this. It made no error in doing so. This is a correct statement.

[11] In addition, the General Division decision in this application was not based on whether the reconsideration request regarding the 2010 application was lost. The decision was based on the General Division's conclusion that the Claimant was capable of forming or expressing an intention to make an application before he did so in 2018.

[12] I have read the General Division decision and reviewed the written record. The General Division did not overlook or misconstrue any important information. There is no suggestion that the General Division made an error in law or failed to provide a fair process.

[13] Therefore, the appeal does not have a reasonable chance of success.

CONCLUSION

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

[15] If the Claimant thinks that an administrative error was made by the Minister with respect to the 2010 application, he could contact Service Canada and request that they investigate this.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	Daniel Belina, Counsel for the Applicant
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