



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *DB v Minister of Employment and Social Development*, 2020 SST 1005

Tribunal File Number: AD-20-822

BETWEEN:

**D. B.**

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: December 3, 2020

## **DECISION AND REASONS**

### **DECISION**

[1] Leave to appeal is refused.

### **OVERVIEW**

[2] D. B. (Claimant) completed high school and has held a number of part-time jobs. She last worked in a pharmacy. The Claimant applied for a Canada Pension Plan disability pension and claims that she is disabled by a number of conditions, including back pain, physical injuries to her wrists and pelvis from an accident, other injuries from two other accidents, and hearing loss since birth. She is also a breast cancer survivor.

[3] 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 the Claimant did not have a severe disability before the end of her minimum qualifying period (MQP – the date by which a claimant must be disabled in order to receive the disability pension). The Claimant's MQP is December 31, 2014.

### **PRELIMINARY MATTER**

[4] The Claimant did not set out any grounds of appeal that the Tribunal's Appeal Division can consider in the Application to the Appeal Division. The Tribunal wrote to the Claimant, explained what grounds of appeal (reasons for appealing) the Appeal Division can consider and asked her to provide this. The Claimant responded with further explanation of her physical condition and the grounds of appeal examined below.

### **ISSUES**

[5] Does the appeal have a reasonable chance of success because the General Division may have based its decision on at least one of the following factual errors:

- a) The General Division examined the Claimant's condition at December 31, 2014 instead of now;

- b) The General Division decision states that she had a mastectomy when she had a lumpectomy followed by radiation and chemotherapy; or
- c) The General Division decision states that her accident happened on April 27, 2016 when it happened on April 26, 2017?

## **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.<sup>1</sup>

[7] In order for an appeal to succeed on the basis of an important factual error, three criteria must be satisfied. They are:

- 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.<sup>2</sup>

### **The General Division considered the Claimant's condition at December 31, 2014**

[8] The Claimant's first ground of appeal is that the General Division made a factual error because it considered her condition as of December 31, 2014 instead of when the hearing was held. However, to be eligible to receive the disability pension a claimant must be disabled before the end of their MQP. This date is calculated based on when and how much they contributed to

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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(1)(c)

the Canada Pension Plan from earnings.<sup>3</sup> The Claimant's MQP is December 31 2014. Therefore, the appeal does not have a reasonable chance of success on the basis that the General Division made an error in considering her condition at that time.

### **Breast cancer treatment**

[9] The Claimant's second ground of appeal is that the General Division based its decision on an important factual error when it described her treatment for breast cancer. The Claimant says that she underwent a lumpectomy, followed by radiation and chemotherapy. She specifically states that her chemotherapy was not liquid, but oral medication.

[10] However, the General Division decision states, "The Claimant underwent a partial right breast mastectomy due to ductal carcinoma in October 2012, followed by radiation, and chemotherapy."<sup>4</sup> Although it does not use the term "lumpectomy", partial mastectomy is the same thing.

[11] In addition, the decision does not specify what type of chemotherapy the Claimant had.

[12] Consequently, the appeal does not have a reasonable chance of success on this basis.

### **Accident date**

[13] Finally, the Claimant says that leave to appeal should be granted because the General Division decision states that she was in an accident on April 27<sup>th</sup> when it occurred on April 26<sup>th</sup>. The Claimant said in the questionnaire that accompanied the disability pension application that she could no longer work because of her medical condition on April 26, 2016.<sup>5</sup> So, the General Division made a factual error when it stated that the Claimant said that she was disabled since April 27, 2016.<sup>6</sup>

[14] However, the General Division had to decide whether the Claimant was disabled on or before the end of the MQP, which is December 31, 2014; not the date of the accident. The

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<sup>3</sup> *Canada Pension Plan* s. 42(2)

<sup>4</sup> General Division decision at para. 9

<sup>5</sup> GD2-216

<sup>6</sup> General Division decision at para. 8

General Division decision was not based on the accident date. Therefore the appeal does not have a reasonable chance of success on this basis.

**CONCLUSION**

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

Valerie Hazlett Parker  
Member, Appeal Division

REPRESENTATIVE:	D. B., Self-represented
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