



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MD v Minister of Employment and Social Development*, 2020 SST 1061

Tribunal File Number: AD-20-853

BETWEEN:

M. D.

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: December 17, 2020

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] M. D. is the Claimant in this case. He came to Canada after completing school and working in different jobs. He last worked in Canada in a hardware store. The Claimant applied for a Canada Pension Plan disability pension and claimed that he was disabled by a number of medical conditions, including knee arthritis and pain, sleep apnea and heart problems. 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's disability was not severe under the *Canada Pension Plan* before the end of the minimum qualifying period (the date by which a claimant must be disabled to receive the disability pension).

[3] The Claimant now requests leave to appeal the General Division decision to the Tribunal's Appeal Division. This is refused because the appeal does not have a reasonable chance of success based on the General Division having made an important factual error.

ISSUES

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

- a) The General Division stated that the doctor performed an ERCP after a serious liver attack; or
- b) The General Division failed to consider that in 2012, his depression was worse, he had sleep problems, hernia issues, and difficulties after an angioplasty.

ANALYSIS

[5] 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:¹

- 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.

[6] 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.

Important Factual Errors

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

- a) that a finding of fact was erroneous (wrong);
- 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

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. 58(1)(c)

[8] First, the Claimant says that the General Division based its decision on an important factual error when it stated that he would undergo an ERCP⁴ when he suffered a serious liver attack.⁵ He argues that this procedure was done at other times as well.

[9] The General Division's statement may have been wrong. However, the decision was not based on when the Claimant underwent this procedure. It was based on the General Division's findings that the Claimant's conditions, considered individually or together, were not a severe disability. Therefore, the appeal does not have a reasonable chance of success on this basis.

[10] Second, the Claimant says that the General Division based its decision on an important factual error because it failed to consider that in 2012, his depression was worse, he had sleep problems, hernia issues, and difficulties after an angioplasty.

[11] However, the General Division considered all of the Claimant's conditions, including his liver attacks,⁶ sleep apnea,⁷ heart condition,⁸ depression,⁹ and knee problems.¹⁰ It also considered the cumulative impact of all of the Claimant's conditions on his capacity regularly to pursue any substantially gainful occupation. Therefore, the appeal also does not have a reasonable chance of success on this basis.

CONCLUSION

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

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	M. D., Self-represented
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⁴ This is a diagnostic test for liver and associated problems

⁵ General Division decision at para. 15

⁶ General Division decision at paras. 12-17

⁷ General Division decision at para. 18

⁸ General Division decision at para. 19

⁹ General Division decision at para. 20

¹⁰ General Division decision at paras. 21-22

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