



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RM v Minister of Employment and Social Development*, 2021 SST 6

Tribunal File Number: AD-20-819

BETWEEN:

R. M.

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: January 12, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] R. M. (Claimant) completed high school and earned a carpentry certificate. He worked as a carpenter for many years. He was also self-employed doing physically demanding jobs.

[3] In 2017, the Claimant applied for a Canada Pension Plan disability pension. He claims that he is disabled by a number of physical conditions, including hearing loss; problems with his hands and right wrist; shoulder, foot and back pain; and prostate cancer. 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.

[4] The Claimant then applied to have the General Division rescinded or amended based on new material facts.¹ He presented over 600 pages of medical records with this application. The General Division dismissed this application. It decided that the Claimant had not presented new material facts because he did not set out any legal basis for his application to succeed.²

[5] Leave (permission) to appeal the General Division decision to the Tribunal's Appeal Division is refused. The Claimant has not presented any ground of appeal (reasons for appealing) that has a reasonable chance of success.

PRELIMINARY MATTER

[6] The Claimant did not present any grounds of appeal that the Appeal Division can consider in the Application to the Appeal Division. The Appeal Division held two Case Management Conferences. The law regarding appeals to the Appeal Division was explained. The

¹ Section 66 of the *Department of Employment and Social Development Act* permits the General Division to rescind or amend its decision based on new material facts.

² General Division decision at para. 17

Claimant was given more time to file grounds of appeal. The Claimant filed further documents with the Tribunal. These documents were considered when making this decision.

ISSUE

[7] Does the appeal have a reasonable chance of success because the General Division failed to consider the new medical evidence that was presented?

ANALYSIS

[8] 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.³

[9] However, a claimant must first obtain leave to appeal. Leave to appeal to the Appeal Division must be refused if the appeal does not have a reasonable chance of success.⁴ Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

[10] In the application to the Appeal Division the Claimant again refers to the medical evidence that he presented to the General Division. However, repeating arguments made to the General Division is not a ground of appeal that the Appeal Division can consider. Leave to appeal cannot be granted on this basis.

³ This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

⁴ Section 58(2) of the *Department of Employment and Social Development Act*

[11] I have reviewed the General Division decision and the written record. The General Division did not overlook or misconstrue any important information. There is no suggestion that it failed to provide a fair process.

[12] The General Division had to decide if the Claimant had presented a new material fact that could not have been discovered at the time of the initial hearing with the exercise of due diligence.⁵ This is correctly set out in the General Division decision.⁶ Further, the decision states that the Claimant presented over 600 pages of medical records to support the application. The Claimant did not, however, identify specifically what information in these documents were new material facts, what efforts had been made to present this evidence before the initial decision was made, or why each new material fact would reasonably be expected to change the initial decision,⁷ even after the Tribunal wrote to him and asked for this information.⁸ Nothing suggests that this statement of the law is incorrect.

CONCLUSION

[13] Leave to appeal is refused because the Claimant has not presented a ground of appeal that can be considered.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	David Mullins, for the Applicant
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⁵ Section 66 of the *Department of Employment and Social Development Act*

⁶ General Division decision at para. 9

⁷ See General Division decision at para. 15

⁸ General Division decision at para. 16