



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *NE v Minister of Employment and Social Development*, 2021 SST 38

Tribunal File Number: AD-21-9

BETWEEN:

N. E.

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: February 4, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] N. E. (Claimant) worked as a medical receptionist. She stopped working and applied for a Canada Pension Plan disability pension. She said that she was disabled because she had cancer. The Minister of Employment and Social Development granted the application. The Claimant began to receive disability pension payments as of June 2012.

[3] The Claimant returned to work in January 2014. In 2020, the Minister investigated the Claimant's disability status and decided that she was no longer disabled as of April 2014. It stopped payment of the disability pension and assessed an overpayment of approximately \$39,600.

[4] The Claimant appealed the Minister's decision regarding the overpayment to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that the Claimant was no longer disabled in January 2014, and that it has no jurisdiction to reduce the overpayment.

[5] Leave to appeal this decision to the Tribunal's Appeal Division is refused. The General Division provided a fair process.

ISSUE

[6] Does the appeal have a reasonable chance of success because the General Division failed to provide a fair process to the Claimant?

ANALYSIS

[7] 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

[8] 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.

[9] The General Division must provide parties with a fair process. This means that it must ensure that all parties have the opportunity to present their legal case to the Tribunal, to know and answer the other party's legal case, and to have a decision made by an independent decision maker based on the law and the facts.

[10] The Claimant says that the General Division failed to provide her with a fair process because she had contacted a legal clinic to represent her. Her representative did not attend the hearing because the Claimant did not tell him about the hearing date.

[11] I have listened to the recording of the General Division hearing and reviewed the written record. At no time did the Claimant advise the Tribunal that she had a representative. The Tribunal communicated directly with the Claimant, not anyone on her behalf. Therefore, the General Division would have no way to know that the Claimant had hired a representative.

[12] The General Division cannot be faulted for failing to hear from a claimant's representative when there is no way to know that they were involved in the appeal.

[13] Nothing indicates that the Claimant was not able to fully present her legal case to the General Division.

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

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

[14] The appeal does not have a reasonable chance of success on the basis that the General Division failed to provide a fair process.

[15] There is no indication that the General Division made an error in law.

[16] The facts are not in dispute. The General Division did not overlook or misconstrue any important information.

CONCLUSION

[17] Leave to appeal is refused.

[18] If the Claimant wishes to discuss how the overpayment could be reduced and/or make payment arrangements, she should contact Service Canada.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	Andrian Nakarikov, Counsel for the Applicant
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