



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SY v Minister of Employment and Social Development*, 2021 SST 155

Tribunal File Number: AD-21-77

BETWEEN:

S. Y.

Applicant
(Claimant)

and

Minister of Employment and Social Development

Respondent
(Minister)

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: April 14, 2021

DECISION AND REASONS

DECISION

[1] I am refusing the Claimant leave (permission) to appeal.

OVERVIEW

[2] The Claimant has owned and operated a restaurant for many years. He has had replacement surgeries for his left knee and both hips. He has had a plate inserted to fix a broken left ankle.

[3] The Claimant is now 62 years old. In October 2018, he began receiving a Canada Pension Plan (CPP) retirement pension. The next month, he applied for the CPP disability pension, claiming that he could no longer work because of hip and knee pain. He also cited other medical conditions, including seizures, hammertoe, memory loss, and shoulder tendonitis.

[4] The Minister refused the application because the *Canada Pension Plan* does not allow claimants to receive retirement and disability pensions at the same time. The Minister did not find enough evidence that the Claimant was disabled as of September 2018, and it did not find the Claimant eligible for the post-retirement disability pension as of December 2019.

[5] The Claimant appealed the Minister's refusal to the Social Security Tribunal's General Division. The General Division held a hearing by teleconference and, in a decision dated December 10, 2020, dismissed the appeal. The General Division acknowledged that the Claimant had health problems but noted that he continued to work part-time in his restaurant.

[6] On March 11, 2021, the Claimant requested leave to appeal from the Appeal Division. He expressed his disagreement with the General Division's decision and noted that his doctors had agreed that he was incapable of lifting heavy object or walking long distances.

[7] The Tribunal then sent a letter to the Claimant reminding him that the Appeal Division can only look at specific errors on the part of the General Division. The Tribunal asked the Claimant to submit further reasons to explain why he was appealing.

[8] The Claimant replied on April 7, 2021. He repeated his conviction that he was disabled and insisted that his condition was getting worse. He noted that the General Division had interviewed him and could see for itself how disabled he was. He asked why his doctors would risk their licenses by declaring him disabled if he actually wasn't.

[9] I have reviewed the Claimant's medical file and the General Division's decision. I have concluded that the Claimant's appeal does not have a reasonable chance of success.

ISSUE

[10] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.¹

[11] An appeal can proceed only if the Appeal Division first grants leave to appeal.² At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.³ This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.⁴

[12] I have to decide whether the Claimant has an arguable case.

ANALYSIS

[13] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the three grounds of appeal permitted under the law.

¹ The formal wording for these grounds of appeal is found in s 58(1) of the *Department of Employment and Social Development Act* (DESDA).

² DESDA, ss 56(1) and 58(3).

³ DESDA, s 58(2).

⁴ *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[14] The Claimant argues that the General Division dismissed his appeal in the face of medical evidence showing that he suffers from disabling hip and knee pain, among other conditions. I don't see a reasonable chance of success for this argument.

[15] One of the General Division's jobs is to establish facts. In doing so, it is entitled to some leeway in how it chooses to weigh the evidence. In this case, the General Division noted that Dr. Malcolm, a family practitioner, had described the Claimant's condition as "grave" and declared him incapable of work.⁵ But the General Division also referred to evidence that the Claimant continued to work in his restaurant for three to five hours per day, seven days per week.⁶ The General Division noted that, despite ongoing joint pain and occasional seizures, the Claimant was able to perform tasks such as sweeping, mopping, washing dishes, and paying bills. The General Division concluded that, while the Claimant could no longer do heavy physical work, he was capable of light duties as of both September 2018 and December 2019.

[16] I don't see an arguable case that the General Division erred in making these findings. My review of its decision indicates that the General Division meaningfully analyzed the Claimant's testimony and his medical file in the context of his age, education, and work experience. The General Division acknowledged that the Claimant had lost some of his functionality but found that he was still regularly capable of pursuing a substantially gainful occupation by the end of his eligibility periods.

[17] The Claimant may not agree with its decision, but the General Division had a right to weigh the available evidence and make reasonable findings of fact.⁷ The Claimant is asking me to reassess the evidence and substitute my judgment for the General Division's. I am unable to do so. My authority as an Appeal Division member permits me to determine only whether any of the Claimant's reasons for appealing fall within the three specified grounds of appeal and whether any of those reasons have a reasonable chance of success.

⁵ The General Division referred to the CPP Medical Report completed by Dr. Brendan Malcom on November 9, 2018, GD2-177.

⁶ General Division decision, para 19.

⁷ *Simpson v Canada (Attorney General)*, 2012 FCA 82.

[18] I see nothing to suggest that the General Division ignored or mischaracterized evidence when it found that the Claimant was not disabled.

CONCLUSION

[19] The Claimant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, the application for leave to appeal is refused.



Member, Appeal Division

REPRESENTATIVE:	S. Y., self-represented
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