



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SB v Minister of Employment and Social Development*, 2021 SST 154

Tribunal File Number: AD-21-90

BETWEEN:

S. B.

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: April 15, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] S. B. (Claimant) completed Grade 10 and worked for a short time in Sri Lanka before she moved to Canada. In Canada the Claimant completed an English course and worked in physically demanding jobs. The Claimant applied for a Canada Pension Plan disability pension and says that she is disabled by a number of conditions including back pain, asthma, diabetes and a heart condition (a pacemaker was inserted in 2018).

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed to the Tribunal. The Tribunal's General Division dismissed the appeal. It decided that there was no medical evidence that the Claimant had a severe disability before the end of her minimum qualifying period (MQP – the date by which a claimant must prove that they are disabled to receive the disability pension).

[4] The Claimant now asks for leave (permission) to appeal this decision to the Tribunal's Appeal Division. Leave to appeal is refused. The Claimant has not presented a ground of appeal (reason for appealing) upon which the appeal has a reasonable chance of success.

ISSUE

[5] Has the Claimant presented a ground of appeal that the Appeal Division can consider and on which the appeal has a reasonable chance of success?

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.¹

[7] However, a claimant must first obtain leave to appeal. The Appeal Division must refuse leave to appeal 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 that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

[8] In the Application to the Appeal Division, the Claimant indicated that she was asking for leave to appeal because the General Division based its decision on an important factual error. However, she did not set out what that error was. The Tribunal wrote to the Claimant and explained what grounds of appeal the Appeal Division can consider and asked her to provide this. The Claimant responded that the Tribunal had failed to consider that the Claimant stopped working because of her illness.

[9] The appeal does not have a reasonable chance of success on this basis.

[10] To receive the disability pension, the Claimant had to prove that she was disabled before the end of her MQP. This date is calculated based on a claimant's contributions to the Canada Pension Plan. The Claimant's MQP is December 31, 2001. This is correctly set out in the General Division decision.³

[11] The General Division examined the oral and medical evidence. The decision summarizes the Claimant's testimony, including when she worked and that she stopped working due to breathing problems because of dust.⁴ It also states that there is no medical evidence before or at

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*

³ General Division decision at para. 9

⁴ General Division decision at para. 22

the MQP date.⁵ It also states that the Claimant worked after this, in 2006, 2007, 2011 and 2012, which demonstrates work capacity at that time.⁶

[12] I have read the General Division decision and the written record. The General Division did not overlook or misconstrue any important information.

[13] The Claimant also wrote that she did not receive much advance notice of the General Division hearing. She did not, however, say that this prevented her from presenting her legal case to the Tribunal or answering the other party's legal case. Therefore, the appeal does not have a reasonable chance of success on this basis.

CONCLUSION

[14] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	SoundarajahSuppiah, for the Applicant
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⁵ General Division decision at para. 24

⁶ General Division decision at para. 23