



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *SA v Minister of Employment and Social Development*, 2021 SST 227

Tribunal File Number: AD-21-168

BETWEEN:

S. A.

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: May 31, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] S. A. (Claimant) worked as a grocery manager. He stopped working when he could no longer manage the physical requirements of the job in 2011, but he returned to work at the store on a part-time basis in 2015–2016. The Claimant went to school and obtained a post-secondary diploma when he was not working at the store.

[3] The Claimant applied for a Canada Pension Plan disability pension in 2017. He says that he is disabled by type 1 diabetes, back and nerve pain, and mental health illnesses.

[4] The Minister of Employment and Social Development refused the application. The Claimant appealed to the Tribunal's General Division, and it dismissed the appeal. The Claimant appealed to the Tribunal's Appeal Division. At that time, the parties agreed that the Appeal Division should refer the matter back to the General Division because the Claimant had not been given a proper chance to present his legal case to the Tribunal.

[5] The Tribunal's General Division held a new hearing. It decided that the Claimant did not have a severe disability before the end of the minimum qualifying period (MQP—the date by which a claimant must prove that they are disabled to receive the disability pension). It decided that the Claimant's part-time work and attendance at the post-secondary program showed that he had capacity regularly to work.

[6] Leave to appeal this decision to the Tribunal's Appeal Division is refused. The appeal does not have a reasonable chance of success because the General Division based its decision on an important factual error and there is no indication that it made any other errors.

ISSUE

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

- a) The Claimant was not monitoring his blood sugars.
- b) The Claimant was returning to work.
- c) Going to school showed capacity to work.
- d) It failed to give proper weight to evidence about the Claimant's physical limitations?

ANALYSIS

[8] An appeal to the Tribunal's Appeal Division is not a rehearing 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

[9] 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 (reason for appealing) that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

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

² See section 58(2) of the *Department of Employment and Social Development Act*.

[10] To succeed on appeal on the basis that the General Division based its decision on an important factual error, the Claimant must prove three things:

- a) A finding of fact was erroneous (wrong).
- b) The finding was made perversely, capriciously, or without regard for the material that was before the General Division; and
- c) The decision was based on this finding of fact.³

The Claimant's Blood Sugar

[11] First, the Claimant disagrees with the General Division's statement that he was not monitoring his blood sugars.⁴ However, this statement is not a finding of fact made by the General Division, but a summary of Dr. Cortens' clinic notes. It is the doctor who wrote that the Claimant was not monitoring his blood sugars.

[12] Therefore, the appeal does not have a reasonable chance of success on this basis.

The Claimant's Return to Work

[13] Second, the Claimant disagrees with how the General Division weighed evidence about his return to work at the grocery store in 2015–2016. He says that his medical team recommended this because he could not perform his prior job duties and because of the stress caused by how a medical insurance company had treated him.

[14] It is up to the General Division to accept the evidence from all parties, weigh it, and make a decision based on the law and the facts. This is what the General Division did. It considered the evidence about the Claimant's return to work at the grocery store. This included his salary⁵ and

³ See section 58(1)(c) of the *Department of Employment and Social Development Act*.

⁴ See General Division decision at para 15.

⁵ See General Division decision at para 30.

the evidence that he worked shorter shifts,⁶ that his co-workers could help him,⁷ and that his doctor monitored him monthly.⁸

[15] Leave to appeal cannot be granted because the Claimant disagrees with how the General Division weighed the evidence.⁹ Therefore, the appeal does not have a reasonable chance of success on this basis.

The Claimant's Post-secondary Program

[16] The General Division received evidence about the Claimant's full-time attendance at a two-year post-secondary program. This included attendance at classes, homework and participation in placements.¹⁰ The General Division explains why it decided that the Claimant's participation in the program showed work capacity. For example, the decision states that the Claimant was able to attend classes full-time as well as drive to and attend placements.

[17] Again, leave to appeal cannot be granted because the Claimant disagrees with how the General Division weighed this evidence. The appeal does not have a reasonable chance of success on this basis.

The Claimant's Physical Limitations

[18] Finally, the Claimant writes about his physical limitations. The General Division considered them. The decision summarizes what the Claimant said about his conditions, including that he has pain in his feet and legs.¹¹ The repetition of this evidence is not a basis on which leave to appeal can be granted.

[19] The Claimant also writes that he began to have eye surgeries in 2017. This is not mentioned in the decision. However, the Claimant's MQP ended on December 31, 2013. The General Division had to decide whether the Claimant was disabled on or before that date.

⁶ See General Division decision at para 32.

⁷ See General Division decision at para 34.

⁸ See General Division decision at para 32.

⁹ See *Simpson v Canada (Attorney General)*, 2012 FCA 82.

¹⁰ See General Division decision at paras 25 to 29.

¹¹ See General Division decision at para 11.

Therefore, any medical condition that arose after the end of the MQP (including the eye condition) is not relevant to the decision.

[20] Therefore, the appeal does not have a reasonable chance of success on this basis.

[21] I have reviewed the General Division decision and the documents filed with the Tribunal. The General Division did not overlook or misconstrue any important information. There is no suggestion that it made an error in law or failed to provide a fair process.

CONCLUSION

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

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	S. A., self-represented
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