



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *AH v Minister of Employment and Social Development*, 2021 SST 305

Tribunal File Number: AD-21-185

BETWEEN:

A. H.

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: June 28, 2021

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Claimant is a 46-year-old former personal trainer. In 2007, he was injured in a shooting, leaving a bullet permanently lodged in his left leg. He was last employed in March 2020, when his contract with a fitness centre came to an end.

[3] In July 2018, the Claimant applied for a Canada Pension Plan (CPP) disability pension. He claimed that he could hardly walk. The Minister refused the application because, in its view, the Claimant had not shown that he had a severe and prolonged disability.

[4] 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 May 30, 2021, dismissed the appeal. The General Division looked at the Claimant's medical file and found no evidence that he was regularly incapable of a substantially gainful occupation. In particular, the General Division saw no indication that the Claimant's condition had deteriorated in the years since his gunshot injury.

[5] The Claimant is now requesting permission to appeal from the Appeal Division. He alleges that the General Division ignored the following items of evidence:

- Three medical practitioners said that the bullet in his leg was pressing on his sciatic nerve; and
- The Canada Revenue Agency engineered his rejection for disability benefits in reprisal for his using a fraudulent social insurance number (SIN).

[6] The Claimant also alleges that the General Division made a legal error by not requiring the Minister to submit evidence.

[7] 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

[8] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded unfairly;
- interpreted the law incorrectly; or
- based its decision on an important factual error.¹

[9] 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

[10] I had to decide whether the Claimant had an arguable case.

ANALYSIS

There is no arguable case that the General Division ignored medical evidence

[11] The Claimant argues that the General Division dismissed his appeal in the face of medical evidence showing he is no longer capable of work.

[12] I don't see a reasonable chance of success for this argument.

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.

[13] One of the General Division's jobs is to make findings of fact. In doing so, it is presumed to have considered all the evidence before it.⁵ In this case, I don't see any indication that the General Division disregarded a significant item of medical information on file.

[14] The General Division came to its decision for the following reasons:

- The Claimant submitted no medical information in support of his claim, other than a report⁶ from a general practitioner who had known him for only a week;
- The Claimant did not appear to be taking any pain management medications;
- The Claimant did not submit any test results, imaging reports, or specialist opinions that might have provided insight into his current condition;
- The Claimant was working as a full-time personal trainer only four months before he applied for disability benefits;
- There was no indication that the Claimant's last job came to an end because of his health condition; and
- There was no evidence, other than the Claimant's own testimony, to suggest that his condition had deteriorated in recent years.

[15] 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 the available medical information in the context of his age, education, and work experience. The General Division acknowledged that the Claimant had mobility issues but concluded that they did not prevent him from performing all types of work.

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

⁵ *Simpson v Canada (Attorney General)*, 2012 FCA 82.

⁶ CPP medical report dated August 4, 2020 by Dr. Pravin J. Shukle, family physician, GD2-40.

There is no arguable case that the General Division disregarded the Claimant's testimony

[17] The Claimant alleges that the General Division failed to appreciate that the government refused to pay him a disability pension because of irregularities with his SIN.

[18] Again, I don't see a reasonable chance of success for this argument.

[19] The General Division was well aware of the Claimant's allegation that forces were conspiring to deny him what he believes are his rightful benefits. In fact, much of the General Division's decision was devoted to summarizing and analyzing those allegations.⁷

[20] In the end, the General Division found no basis for any of the Claimant's "wild theories." The General Division also said that, even if his theories were true, they would not change the fact that his medical evidence was weak.

[21] The General Division is entitled to some leeway in how it chooses to weigh the evidence. Here, it heard the Claimant's testimony that he was being persecuted by government authorities. In the end, it decided to give that testimony minimal weight because it lacked support. I don't see how the General Division might have committed an error in coming to this conclusion.

There is no arguable case that the Minister should have been at the hearing

[22] The Claimant suggests that the General Division did him an injustice by not requiring the Minister to submit evidence or attend the hearing.

[23] I don't see a reasonable chance of success for this argument.

[24] For CPP disability claims, the burden of proof lies with the person seeking the benefit. It was ultimately up to the Claimant to prove that he was disabled. The Minister was under no obligation to show that the Claimant was **not** disabled.

⁷ General Division decision, paras 15-20.

[25] That means that, under the law, the Minister did not have to make argument, submit evidence or even show up at the hearing. I realize that the Claimant was looking to cross-examine a government official about his recent struggles, but I don't see how such a confrontation would have brought out information to further his disability claim. In fact, one could argue that the Claimant's case was only helped by the Minister's absence.

CONCLUSION

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



Member, Appeal Division

REPRESENTATIVE:	A. H., self-represented
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