



Citation: *RS v Minister of Employment and Social Development*, 2021 SST 433

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** R. S.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** General Division decision dated April 21, 2021  
(GP-20-1447)

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**Tribunal member:** Neil Nawaz

**Decision date:** August 23, 2021

**File number:** AD-21-244

## Decision

[1] Leave to appeal is refused. I see no basis for this appeal to go forward.

## Overview

[2] The Claimant is a former operations manager at a privately-owned maritime port. He was diagnosed with Crohn's disease in 2014, and he was laid off from his job in 2018. He is now 52 years old.

[3] In October 2019, the Claimant applied for a Canada Pension Plan (CPP) disability pension. He claimed that he could no longer work because of frequent and unpredictable bowel movements. He also reported heart palpitations and arrhythmias, as well as renal failure due to liver cirrhosis as a result of medication.

[4] The Minister refused the application because, in its view, the Claimant had not shown that he had a severe and prolonged disability.<sup>1</sup>

[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 April 21, 2021, dismissed the appeal because it hadn't found enough medical evidence to show that the Claimant was disabled from substantially gainful employment. In particular, the General Division relied on several reports from the Claimant's gastroenterologist indicating that his Crohn's disease was in remission.

[6] On July 19, 2021, the Claimant submitted an application requesting leave (or permission) to appeal from the Appeal Division. In it, he merely said that the General Division had committed errors in coming to its decision. The Tribunal then sent a letter asking the Claimant to elaborate on his reasons for appealing.

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<sup>1</sup> Coverage for the CPP disability pension is established by working and contributing to the CPP. In this case, the Claimant's CPP disability coverage will end on December 31, 2021.

[7] In an email dated August 16, 2021, the Claimant responded with the following allegations:

- The General Division was not qualified to override the opinions of his gastroenterologist and family doctor, who agreed that severe Crohn's disease rendered him unable to work;
- The General Division failed to consider all of the symptoms of his medical conditions, which include Crohn's disease, non-alcoholic cirrhosis, renal insufficiency, arterial fibrillation, and heart arrhythmia; and
- The COVID-19 crisis made it impossible for him to get the medical appointments he needed to provide updated information about his condition.

[8] I have reviewed the General Division's decision against the underlying record. I have concluded that the Claimant has not advanced any grounds that would have a reasonable chance of success on appeal.

## **Issue**

[9] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.<sup>2</sup>

[10] An appeal can proceed only if the Appeal Division first grants leave, or permission, to appeal.<sup>3</sup> At this stage, the Appeal Division must be satisfied that the

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<sup>2</sup> *Department of Employment and Social Development Act* (DESDA), s 58(1).

<sup>3</sup> DESDA, ss 56(1) and 58(3).

appeal has a reasonable chance of success.<sup>4</sup> This is a fairly easy test to meet, and it means that a claimant must present at least one arguable case.<sup>5</sup>

[11] I had to decide whether there was an arguable case for any of the Claimant's reasons for appealing.

## **Analysis**

[12] 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 four grounds of appeal permitted under the law.

### **There is no arguable case that the General Division erred by “overriding” doctors’ opinions**

[13] The Claimant argues that the General Division had no right to disregard the opinions of his family physician and gastroenterologist that he was no longer capable of employment.

[14] I don't see an arguable case on this point.

[15] The General Division is tasked with establishing the facts, and it is entitled to some leeway in how it chooses to weigh the evidence.<sup>6</sup> In this case, the General Division reviewed various progress notes and letters from the Claimant's gastroenterologist but found, on balance, that they did not point to a severe and prolonged disability:

There are seven reports on file from Dr. Fidelia Silva, gastroenterologist. They range from August 7, 2018, to April 28, 2020, for a period of almost

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<sup>4</sup> DESDA, s 58(2).

<sup>5</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>6</sup> *Simpson v Canada (Attorney General)*, 2012 FCA 82.

two years. Of those reports, four speak of “remission” in speaking of the Claimant’s Crohn’s disease, and one speaks of “probable remission.”<sup>7</sup>

[16] The Claimant says that the General Division should have placed more weight on Dr. Silva’s letter dated April 28, 2020.<sup>8</sup> As it happens, the General Division took time to explain why it was skeptical of that letter:

However, I am struck by Dr. Silva’s final report, dated April 28, 2020. It comes less than a month after the progress report dated April 1, 2020 and seems to be well out of line with the preceding reports. I note that while all of the preceding reports were addressed to the Claimant’s family doctors, this last one is addressed to “To whom it may concern”, likely to be used in this case.

Considering how much of an outlier this last report is, considering how much it deviates from the previous reports, considering that last report that spoke of remission was less than a month before this final report, I believe Dr. Silva was advocating for her client in her last report. I simply cannot give it much weight.<sup>9</sup>

[17] Here, the General Division offered reasons for discounting Dr. Silva’s April 28, 2020 letter—it was inconsistent with her other reports, and it was apparently prepared for the purpose of advancing the Claimant’s disability case rather than in service of his medical care. I don’t see how the General Division erred in its analysis.

[18] Similarly, I don’t find fault with the General Division’s approach to a letter dated June 12, 2020 from the Claimant’s family physician, Dr. Sylvie Lepage.<sup>10</sup> Again, the General Division noted that the letter was addressed “To Whom It May Concern” and that it took a markedly different line than Dr. Lepage’s previous reports.

[19] The Claimant should be aware that a doctor’s word is not conclusive in these kinds of cases. Disability, as defined under the *Canada Pension Plan*, is a legal

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<sup>7</sup> General Division decision, para 17.

<sup>8</sup> In his reasons for appealing, the Claimant also referred to a report from Dr. Silva dated October 2, 2020. I was unable to find a report of that description on file. However, the Claimant said that it too declared him unable to work because of severe Crohn’s disease. In that way, it does not appear to have differed in substance from Dr. Silva’s letter of April 28, 2020.

<sup>9</sup> General Division decision, paras 22 and 23.

<sup>10</sup> Dr. Lepage’s letter can be found at GD2-96.

question as much as it is a medical one. Opinions from treatment providers must be considered against other factors, including the legal definition for disability and cases that have interpreted that definition.

### **There is no arguable case that the General Division failed to consider all of the Claimant's medical conditions and their symptoms**

[20] A disability claimant's employability must be assessed in light of all the circumstances. They include the Claimant's background and overall medical condition, not just his or her "main" impairment. In this case, the General Division's decision contains what appears to be a thorough summary of the Claimant's medical file, followed by an analysis that meaningfully discusses his medical evidence and testimony in the context of his personal profile. It seems to me that the General Division explicitly considered each and every one of the Claimant's major complaints, including Crohn's disease, non-alcoholic cirrhosis, renal insufficiency, arterial fibrillation, and heart arrhythmia.

[21] It is settled law that an administrative tribunal charged with fact finding is presumed to have considered all the evidence before it and need not discuss each and every element of a party's submissions.<sup>11</sup> I have reviewed the General Division's decision and have found no indication that it ignored, or gave inadequate consideration to, any significant evidence.

### **There is no arguable case that the pandemic prevented the Claimant from making his case**

[22] The Claimant's file contained medical reports from two only physicians. Dr. Lepage and Dr. Silva contributed updates of the Claimant's condition in, respectively, April and June of 2020, following reports that his Crohn's disease and liver cirrhosis were under control.

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<sup>11</sup> *Simpson v Canada (Attorney General)*, 2012 FCA 82.

[23] The Claimant says that he was unable to see a cardiologist about his heart palpitations and arrhythmias for a year-and-a-half. He says that he finally managed to do so on July 22, 2021 and is now awaiting test results.

[24] I don't see an arguable case here.

[25] The Claimant applied for the disability pension two years ago and did not submit any information from his cardiologist at that time or at any time before the beginning of the pandemic in March 2020. His family physician did not mention his heart problems in her June 2020 letter, nor did she mention any need to see a cardiologist. If heart palpitations and arrhythmia were a significant part of the Claimant's impairment, he was free to ask the General Division to delay the hearing to give him more time to seek evidence about those conditions. He didn't do so. At the hearing, the Claimant mentioned in passing his difficulty in getting medical appointments but, again, he did not ask the General Division for an adjournment or postponement.<sup>12</sup>

[26] The onus was on the Claimant to prove his disability. The General Division was under no obligation to actively seek out evidence supporting his claim. It cannot be blamed for relying on only the material that was made available to it.

## Conclusion

[27] 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.



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Member, Appeal Division

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<sup>12</sup> Recording of General Division hearing at 12:00.