



Citation: *TT v Minister of Employment and Social Development*, 2021 SST 503

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	T. T.
Respondent:	Minister of Employment and Social Development
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Decision under appeal:	General Division decision dated August 17, 2021 (GP-21-79)
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Tribunal member:	Janet Lew
Decision date:	September 21, 2021
File number:	AD-21-291

Decision

[1] The appeal filed by the Applicant, T. T. (Claimant), does not have a reasonable chance of success. For that reason, I am refusing the Claimant's application to move ahead with his appeal.

Overview

[2] The Claimant is appealing the General Division decision. The General Division found that the Claimant did not have a severe disability by the end of his minimum qualifying on December 31, 2015. Therefore, it concluded that he was not eligible for a Canada Pension disability pension.

[3] The Claimant argues that the General Division based its decision on important factual errors without regard for some of the evidence before it. He argues that the General Division either overlooked some of the evidence or failed to understand it.

[4] I have to decide whether the appeal has a reasonable chance of success.¹ Having a reasonable chance of success is the same thing as having an arguable case.²

[5] I am not satisfied that there is an arguable case that the General Division overlooked or misinterpreted any of the medical evidence. Therefore, I am not giving permission to the Claimant to move ahead with his appeal. This ends the Claimant's appeal.

Issue

[6] Is there an arguable case that the General Division overlooked or misinterpreted any of the medical evidence?

¹ Under section 58(2) of the *Department of Employment and Social Development Act*, I am required to refuse permission if I am satisfied, "that the appeal has no reasonable chance of success."

² See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

Analysis

[7] The Appeal Division must be satisfied that the appeal has a reasonable chance of success before it gives the claimant permission to go ahead with their appeal. A reasonable chance of success exists if there is a certain type of error.³ These errors are about whether the General Division:

- (a) Failed to make sure that the process was fair;
- (b) Failed to decide an issue that it should have decided, or decided an issue that it should not have decided;
- (c) Made an error of law; or
- (d) Based its decision on an important factual error. (The error has to be perverse, capricious, or without regard for the evidence before it.)

[8] Once an applicant gets permission from the Appeal Division, they move to the actual appeal. There, the Appeal Division will decide whether the General Division made an error and, if so, how to fix that error.

Is there an arguable case that the General Division overlooked or misinterpreted any of the medical evidence?

[9] No. The Claimant does not have an arguable case that the General Division overlooked or misinterpreted any of the medical evidence.

[10] The Claimant argues that the General Division either overlooked or misinterpreted the following:

- The fact that he suffers from functional limitations in walking, bending, standing, lifting, sitting, and retention in voiding⁴

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

⁴ See also Application for Canada Pension Plan Disability benefits, at GD2-49.

- He had physiotherapy for mechanical back pain for his lower back. Although a medical summary states that “acuity of [lower back pain] resolved”⁵ and that he had begun light lifting at work, the Claimant notes that further investigation may be required with further flare-ups
- Another report that showed that he had physiotherapy throughout 2012 and 2013.⁶ He claims that the physiotherapy enabled him to recover when he was in the hospital in 2011. He claims it also helped him when he experienced flare-ups of pain. The Claimant argues that this medical evidence proves that his functional limitations affected his ability to work by December 31, 2015.
- A CT-scan of his lumbar spine taken in December 2011 that showed broad-based diffuse bulge abutting the thecal sac at the L4-5 level. The Claimant states that on the same night he had the CT scan, he was unable to feel any feeling in his right leg. He also experienced numbness in his genital area and could not void. He went into retention and needed a catheter. He says that this is a medical emergency and shows that he has a red flag for cauda equine syndrome (CES).⁷

Urology clinic note dated January 20, 2012⁸ that documents the Claimant’s longstanding back issues and history of retention. The Claimant writes, “This is complete CES stated and permanent irreversible damage is done to leg and bladder.”⁹ (The second page of this report is missing from the General Division file.)

- Operative report dated March 14, 2012¹⁰ and Urology Clinic note for August 17, 2012¹¹ - Claimant was having voiding difficulties so underwent a

⁵ See physiotherapy summary dated September 2, 2011, at GD1-22 and at GD2-22.

⁶ See physiotherapy summary dated September 6, 2011, at GD2-23.

⁷ See Claimant’s application to the Appeal Division – Income Security, at AD1C-8, referring to CT scan of lumbar spine at GD2-94 to GD2-95.

⁸ See Urology Clinic Note for visit on January 20, 2012, at GD1-21 and at GD2-19.

⁹ See Claimant’s application to the Appeal Division – Income Security, at AD1C-9, referring to urology report at GD21-21 and at GD2-19.

¹⁰ See operative report – cystoscopy, on March 14, 2012, at GD2-20

¹¹ See Urology Clinic Note for visit on August 17, 2012, at GD2-21.

cystoscopy. The Claimant argues that the reports establish that he has an impingement to his right leg, thus causing retention and requiring catheterization and then an indwelling catheter.¹² He claims that he gets flare-ups from degenerative disc disease, thus adding to his voiding problems. He says they contribute to his inability to work.

- Ultrasound of abdomen on August 6, 2014¹³ - the ultrasound showed a normal abdomen, bladder and prostate. As the ultrasound eliminated several organs and other possible sources responsible for his symptoms, the Claimant argues this is further proof that degenerative disc disease is causing his pain.
- Three medical notes for medical visits on April 8, July 25, and September 22, 2015.¹⁴ The Claimant says that these visits establish that he has a depressive disorder, benign essential hypertension, and anxiety. He also says the note about his unhappiness refers to his degenerative disc disease.
- The fact that he asked his doctor for a prescription for medical marijuana because other medications bothered his stomach. He has been using marijuana for leg and lower back pain since 2013. He says that the marijuana have helped him manage pain, inflammation, anxiety and depression.¹⁵
- The fact that his doctor referred him for medical cannabis in early 2017.¹⁶ The Claimant argues that this establishes marijuana use before the end of his minimum qualifying period of December 31, 2015.

¹² See Claimant's application to the Appeal Division – Income Security, at AD1C-10,

¹³ See ultrasound of abdomen on August 6, 2014, at GD2-96.

¹⁴ See clinical records for medical visits on April 8 (at GD2-84), July 25 and September 22, 2015 (at GD2-85).

¹⁵ See clinical records for medical visit on December 6, 2016, at GD2-87.

¹⁶ Referral form for patients seeking medical cannabis, at GD2-90 and GD2-92.

[11] The Claimant argues that these medical records prove that he has had functional limitations that have affect his ability to work since December 31, 2015.

[12] The Claimant notes that the 2018 medical evidence shows that he has degenerative disc disease. He argues that, because it is a progressive disease, it must have existed for at least the past decade, pre-dating 2011. He argues that he experienced “severe and at times disabling bouts of pain”¹⁷ during this entire timeframe. He also argues that the General Division agreed that he has a deteriorating back condition that requires treatment.

[13] For the most part, it seems that the Claimant is looking for a reassessment of his claim. He is asking the Appeal Division to reconsider the medical evidence from 2011 to 2015 and find that he was severely disabled by December 31, 2015, and that he has been continuously disabled since then. He says that, among other things, he has degenerative disc disease that is getting progressively worse over time.

[14] However, an appeal to the Appeal Division is not a rehearing. The Appeal Division does not have any power to conduct a reassessment of the evidence. At this stage of the appeal, a claimant has to establish that there is an arguable ground relating to one of the types of errors listed in paragraph 8 above.

[15] The Claimant argues that there is such a type of error. He says the General Division overlooked some of the evidence. However, the General Division does not have to refer to all of the evidence before it. One presumes that it has considered all of the evidence, even if it does not mention every report or record.

[16] Here, the Claimant argues that the General Division should have analyzed the medical evidence from 2011 to 2015. He says this evidence establishes that he had ongoing lower back pain and history of retention throughout this time. He also claims that this evidence shows that his condition was severe by December 31, 2015.

¹⁷ See Claimant’s application to the Appeal Division – Income Security, at AD1C-13.

[17] While the General Division did not specifically mention all of the 2011 to 2015 medical records, it is clear that it reviewed this evidence. For instance, the General Division noted that there was very little evidence about the Claimant's health and medical treatment by December 31, 2015.¹⁸

[18] It is also clear that the General Division considered the medical evidence around and before December 31, 2015. Indeed, the General Division cited the same medical records that the Claimant alleges it overlooked.¹⁹ For instance, the General Division examined the CT-scan of the lumbar spine and the urology clinic note of August 17, 2012.

[19] The General Division noted that the records did not establish any impingement of the nerve roots. The records also showed that the Claimant's abdomen, bladder and prostate looked normal. The fact that the ultrasound of the abdomen ruled out his abdomen, bladder and prostate as causes of his symptoms does not prove that degenerative disc disease was the cause of his symptoms. The ultrasound also does not show that the Claimant's symptoms were severe, to the point that he was incapable regularly of pursuing a substantially gainful occupation.

[20] The General Division also discussed the Claimant's three medical visits in 2015.²⁰ The General Division noted that the Claimant needed a prescription refill for an anti-depressant and that he reportedly felt good in April 2015. In July 2015, the Claimant discussed discontinuing some medications. And, in September 2015, the Claimant had questions about medication and his prostate. I note that while the record says that the Claimant was unhappy, the doctor wrote that the Claimant was doing well.

[21] The General Division accurately summarized the concluding opinions set out in these records. The General Division concluded that the Claimant experienced different symptoms, including lower back pain, and that he had depression and anxiety. But, it found that the evidence, particularly for 2015, showed that he was managing his

¹⁸ See General Division decision, at para. 20.

¹⁹ See General Division decision, at para. 23.

²⁰ See General Division decision, at para. 24.

depression and pain. It also found that there was no evidence to show that he had functional limitations for 2015.²¹

[22] The General Division did not mention some of the Claimant's other treatment, such as physiotherapy in 2011, or that he asked for and got a cannabis referral in 2017. However, I do not find that this evidence was of such significance that it merited any analysis. I also find they do not establish a severe disability. For that reason, I am not satisfied that there is an arguable case that the General Division overlooked this evidence either.

[23] In summary, the Claimant argues that the General Division overlooked or misinterpreted important medical evidence. However, I find that the General Division did in fact discuss much of this evidence. It accurately described that evidence. If it did not discuss some of the records, one presumes that it considered them. In any event, I find that, despite the Claimant's arguments, one cannot draw the conclusions that he says one should draw. These records simply do not establish that the Claimant was severely disabled by December 31, 2015.

Conclusion

[24] The Claimant does not have an arguable case, so I am refusing his application. This means the Claimant will not be moving ahead to the next stage of the appeal. This ends his appeal.

Janet Lew
Member, Appeal Division

²¹ See General Division decision, at para. 24.