



Citation: *ES v Minister of Employment and Social Development*, 2022 SST 593

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

# **Leave to Appeal Decision**

**Applicant:** E. S.

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

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**Decision under appeal:** General Division decision dated February 28, 2022  
(GP-20-1967)

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**Tribunal member:** Kate Sellar

**Decision date:** July 4, 2022

**File number:** AD-22-345

## Decision

[1] I am refusing leave (permission) to appeal. The appeal will not go ahead. These reasons explain why.

## Overview

[2] E. S. (Claimant) worked as a taxi driver and later as a dispatcher. He stopped working completely in 2018 because of some very serious diabetes symptoms and complications.

[3] The Claimant applied for a Canada Pension Plan (CPP) disability pension on May 16, 2019. The Minister of Employment and Social Development Canada (Minister) refused his application. The Claimant appealed to this Tribunal.

[4] The General Division dismissed his appeal. The Claimant had to show that his disability was severe and prolonged beginning on or before December 31, 2016 (the last day of his coverage period).<sup>1</sup>

[5] The Claimant had a car accident in 2016. He had alarming symptoms related to his diabetes that year, and started working full time as a dispatcher instead of driving the taxi. The General Division decided that although his disability meant that he could not drive a taxi, by the end of his coverage period the Claimant had capacity for alternate work. In fact, he was doing that work as a dispatcher. Therefore, he wasn't disabled within the meaning of the CPP on or before the end of the coverage period.

[6] There is no doubt that the Claimant's health worsened significantly later, especially in 2018 when he stopped working altogether.

[7] I must decide whether the General Division may have made an error under the *Department of Employment and Social Development Act* (the Act) that would justify granting leave to appeal.

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<sup>1</sup> This coverage period is called the minimum qualifying period, or MQP.

[8] The Claimant has not raised any argument for an error by the General Division that has a reasonable chance of success on appeal. I am refusing leave to appeal. The appeal won't go ahead to the next step.

## **Issue**

[9] The issue in this appeal are as follows:

- a) Could the General Division have made an error about the Claimant's capacity to work on or before the end of his coverage period that would justify granting him permission to appeal?

## **Analysis**

[10] First, I will describe my role at the Appeal Division in terms of reviewing General Division decisions. Second, I will explain how I have decided that the Claimant doesn't have an argument about any error by the General Division that has a reasonable chance of success on appeal.

### **Reviewing General Division decisions**

[11] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, I reviewed the Claimant's arguments, the General Division's decision, and documents in the appeal to decide whether the General Division may have made any errors.

[12] That review is based on the wording of the Act, which sets out the "grounds of appeal." The grounds of appeal are the reasons for the appeal. To grant leave to appeal, I must find that it is arguable that the General Division made at least one of the following errors:

- It acted unfairly.
- It failed to decide an issue that it should have, or decided an issue that it should not have.
- It based its decision on an important error regarding the facts in the file.
- It misinterpreted or misapplied the law.<sup>2</sup>

[13] At the leave to appeal stage, the Claimant must show that the appeal has reasonable chance of success.<sup>3</sup> To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.<sup>4</sup>

### **No possible error about the Claimant's capacity for work during the coverage period**

[14] There is no possible error about the Claimant's capacity for work on or before December 31, 2016.

[15] The Claimant argues that there should be no reason for the General Division to decide his appeal based on his capacity for work in 2016. The Claimant says that his eligibility for the disability pension should be based on 2018, when he actually stopped working.

[16] There are two important rules that apply to the Claimant:

– **The pension coverage rule**

- This rule helps Service Canada decide whether and when a Claimant is covered under the *Canada Pension Plan*.

– **The disability during the coverage period rule**

- This rule helps Service Canada decide whether the Claimant has a disability during a time when they had coverage under the *Canada Pension Plan*.

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<sup>2</sup> See section 58(1) of the *Department of Employment and Social Development Act* (Act).

<sup>3</sup> See section 58(2) of the Act.

<sup>4</sup> The Federal Court of Appeal confirmed this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## The pension coverage rules

[17] The first rule about the CPP is that a benefit can only be available to people who have contributed (paid in) to the CPP. You contribute to the CPP by working, and the employer takes money off your paycheque and sends it to the CPP.<sup>5</sup>

[18] The Claimant needed to show that he contributed enough to have coverage under the CPP.

[19] At the time he applied, the Claimant had contributed enough to the CPP to create a period of time during which he's covered for CPP disability benefits. He paid enough into the CPP in 4 of the last 6 years ending on December 31, 2016.<sup>6</sup>

[20] This does not mean that the Claimant gets disability pension payments starting back to December 31, 2016 when he had coverage under the CPP because he contributed enough back then. There is another rule to apply. The second rule is about disability.

### – The disability during the coverage period rule

[21] The disability coverage period rule is this: claimants who apply for the disability pension must show that they have a severe and prolonged disability. A severe disability makes a person incapable regularly of substantially gainful work.<sup>7</sup> The disability must start **before the coverage period ends**.<sup>8</sup>

[22] The Claimant's coverage period ends December 31, 2016.

[23] The Claimant is in a difficult situation because the symptoms of his diabetes got so much worse by the time he stopped working in 2018. However, the rule says I have to look at what his situation was **during the coverage period**. The problem is that the

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<sup>5</sup> It works differently if a person is self-employed.

<sup>6</sup> See section 44(2)(a)(i) of the *Canada Pension Plan*. See GD2-64 contains the worksheet the Minister uses to check which coverage rule applied to the Claimant based on his contributions to the CPP.

<sup>7</sup> See section 42(2) of the *Canada Pension Plan*.

<sup>8</sup> See section 44 of the *Canada Pension Plan*.

Claimant was working during his coverage period. It was difficult to work from 2016 to 2018, but he did it to pay for his insulin and to provide for his family.<sup>9</sup>

[24] The General Division analyzed the Claimant's work. The General Division considered the number of hours he worked, how reliable he was, and his productivity. He was not driving a taxi, but his job as a dispatcher was real work. It was not a special arrangement to stay employed (sometimes called benevolent employment).<sup>10</sup>

[25] The General Division did not make any error in the approach it took to considering the Claimant's capacity to work. The Claimant can only be eligible for the disability pension if the disability was severe and prolonged on or before December 31, 2016. The Claimant had a disability at that time, but it was not severe within the meaning of the CPP. Later, when he stopped working after the end of the coverage period, the disability was much worse.

[26] There is no argument here that the General Division made an error about the when the Claimant's coverage period ended. The General Division did not make an error by dismissing the appeal because the Claimant could still work during the coverage period and his disability worsened after the end of the coverage period.

[27] I have reviewed the documents in this appeal.<sup>11</sup> The General Division did not ignore or misunderstand the evidence.

## **Conclusion**

[28] I've refused permission to appeal. The Claimant does not have an argument about an error by the General Division that has a reasonable chance of success on appeal. This means that the appeal will not go ahead.

Kate Sellar  
Member, Appeal Division

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<sup>9</sup> See paragraph 30 in the General Division's decision.

<sup>10</sup> See paragraphs 29 to 31, 34 to 36, and 40 to 41 in the General Division's decision.

<sup>11</sup> This review is consistent with what the Federal Court talked about in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.