



Citation: *GO v Minister of Employment and Social Development*, 2022 SST 360

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

# **Leave to Appeal Decision**

**Applicant:** G. O.

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

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**Decision under appeal:** General Division decision dated April 29, 2022  
(GP-21-544)

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**Tribunal member:** Kate Sellar

**Decision date:** August 23, 2022

**File number:** AD-22-478

## Decision

[1] I am refusing leave (permission) to appeal. The Claimant has not raised an error by the General Division that has a reasonable chance of success. The appeal will not go ahead. These reasons explain why.

## Overview

[2] G. O. (Claimant) last worked as a truck driver in November 2016 when he was laid off. In May 2018, he fractured a rib and was in terrible pain. He fractured more ribs after that. He has very bad pain every day now.

[3] The Claimant applied for a Canada Pension Plan (CPP) disability pension on September 10, 2019. The Minister of Employment and Social Development (Minister) refused his application. The Claimant appealed to this Tribunal.

[4] To be eligible for the disability pension, the Claimant had to show that his disability was severe and prolonged within the meaning of the *Canada Pension Plan* on or before December 31, 2017.

[5] The General Division decided that the Claimant didn't prove that his disability was severe by then. His first rib fracture wasn't until May 2018. His other medical conditions in 2017 (when considered on their own or all together) were not severe.

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

[7] The Claimant has not raised any possible error by the General Division that would justify granting permission to appeal. The appeal won't go ahead to the next step.

## **New evidence about treatment**

[8] The Claimant provided me with some updated information about his treatments, both for his depression and for the pain that he has because of his rib fractures.<sup>1</sup>

[9] The Appeal Division does not consider new medical evidence that the Claimant didn't share at the General Division.<sup>2</sup>

[10] The new evidence wouldn't help me to decide whether the Claimant has shown that the General Division might have made an error. Accordingly, I won't consider the new evidence the Claimant provided at the Appeal Division.

## **Issue**

[11] Could the General Division have made an important error of fact by ignoring or misunderstanding the Claimant's evidence about his history of depression?

## **Analysis**

[12] In this decision, I'll explain the approach the Appeal Division must take to reviewing General Division decisions. Then I'll explain how I decided that the Claimant has not raised any error in the General Division decision that would justify granting permission to appeal.

## **Reviewing General Division decisions**

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

[14] 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

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<sup>1</sup> See AD1-5.

<sup>2</sup> See *Parchment v Canada (Attorney General)*, 2017 FC 354.

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>3</sup>

[15] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.<sup>4</sup> To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.<sup>5</sup>

### **No possible error of fact about the Claimant's depression**

[16] The Claimant hasn't raised a possible error of fact by the General Division about his depression that would justify granting him permission to appeal.

[17] The Claimant seems to argue that the General Division ignored or misunderstood the evidence about his depression. He points out that his family doctor "put [him] off work due to stress in 2015" and that in 2017, his family doctor put him off work indefinitely due to anxiety, depression, and stress.<sup>6</sup>

[18] To be eligible for a CPP disability pension, the Claimant had to show that his disability was severe and prolonged on or before December 31, 2017.<sup>7</sup> The General Division noted that the Claimant had depression and anxiety, back pain, and atypical chest pain in 2017. The Claimant's doctor and a specialist provided the Claimant with

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

<sup>4</sup> See section 58(2) of the Act.

<sup>5</sup> The Federal Court of Appeal confirmed this in *Fancy v Canada (Attorney General)*, 2010 FCA 63.

<sup>6</sup> See AD1-2

<sup>7</sup> See section 42(2) of the *Canada Pension Plan*. December 31, 2017 is the last day of the Claimant's minimum qualifying period, or MQP. That MQP is calculated based on his contributions to the Canada Pension Plan (CPP).

basic treatment recommendations to address both problems.<sup>8</sup> The General Division stated that although the Claimant had these health issues in 2017, either “individually or collectively, these would not have prevented the [Claimant] from suitable work.”<sup>9</sup>

[19] An error of fact needs to be important enough that fixing it could affect the outcome of the decision. An error of fact can happen either because the General Division ignored or misunderstood evidence.<sup>10</sup>

[20] The Claimant does not have a reasonable chance of showing that the General Division ignored the evidence about his depression. The General Division mentioned and considered:

- the clinic notes from the Claimant’s doctor showing that the Claimant had depression in 2017
- the Claimant’s documents explaining that he needed time away from work in 2017 after his father died and he was dealing with family challenges
- that family doctor prescribed an anti-depressant in 2017 but it made the Claimant feel worse so he stopped taking it
- that by June 2017, the Claimant’s doctor noted that the Claimant had no mood concerns
- that the Claimant testified that by the spring of 2018, he was looking for and applying for jobs again
- that the Claimant did not try further medication or any other treatment for the depression<sup>11</sup>

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<sup>8</sup> See paragraphs 19 and 20 in the General Division decision.

<sup>9</sup> See paragraph 23 in the General Division decision.

<sup>10</sup> The Federal Court of Appeal explained errors of fact in more detail in *Walls v Canada (Attorney General)*, 2022 FCA 47.

<sup>11</sup> See paragraphs 17, 18 and 22 in the General Division decision.

[21] The General Division seems to have recognized the Claimant's evidence about his in 2017 after his father died. His doctor was treating him for depression, and he was not feeling well enough to work.

[22] The Claimant does not have a reasonable chance of showing that the General Division misunderstood the facts about his depression. The General Division acknowledged those facts and described them in a very similar way to the way that the Claimant describes them.

[23] Instead, the General Division considered some **more** facts about the Claimant's depression, including evidence that the depression improved as 2017 went on, and that by early 2018 he was looking for and planning to return to work (even without any further treatment in terms of medication, therapy, or counselling).

[24] The Claimant explains that he realizes now that he has had depression for a long time. However, the General Division had evidence to support its conclusion that the depression was better under control by December 31, 2017, and that the Claimant was planning to return to work. He was searching for a job.

[25] The Claimant may be more concerned that the General Division concluded that he isn't eligible for the disability pension even though now he experiences so much pain because of his rib fractures.

[26] The General Division acknowledged that the Claimant's rib fractures mean that he is unable to work now because of pain. The problem is that the rib fractures started in 2018, after the end of the Claimant's minimum qualifying period, so they do not help him to show that he is eligible for the disability pension.

## **Conclusion**

[27] I refused permission to appeal. This means that the appeal will not go ahead.

Kate Sellar  
Member, Appeal Division