



Citation: *KA v Minister of Employment and Social Development*, 2022 SST 905

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. A.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 19, 2022
(GP-21-914)

Tribunal member: Neil Nawaz

Decision date: September 14, 2022

File number: AD-22-481

Decision

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

Overview

[2] The Claimant is a 52-year-old man who has training as a civil engineer in Pakistan. In 2001, he immigrated to Canada and studied and worked here for a number of years. He claims that, in 2007, Canadian authorities, in collusion with foreign intelligence agents, forcibly returned him to Pakistan. He has moved between the two countries several times over the past 15 years and is currently living in Toronto.

[3] In August 2019, the Claimant applied for a Canada Pension Plan (CPP) disability pension. In his application, he explicitly denied that he was suffering from a mental or physical impairment, but he claimed that he could no longer work because he was being persecuted and tortured by Canadian and Pakistani government agencies.

[4] Service Canada refused the application. In its view, the Claimant had not proved that he had a severe and prolonged disability during his coverage periods, which ended respectively on December 31, 2007 and March 31, 2018.¹

[5] The Claimant appealed Service Canada's refusal to the Social Security Tribunal's General Division. The General Division held a hearing by teleconference and dismissed the appeal because the Claimant had not provided any medical records relating to his coverage period. The General Division acknowledged that the Claimant might be disabled now but found no evidence that he was incapable of substantially gainful employment in 2007–08.

[6] The Claimant now comes to the Tribunal's Appeal Division asking for permission to appeal. He disagrees with the General Division's decision and maintains that his

¹ Coverage for the CPP disability pension is established by working and contributing to the CPP. In this case, the Claimant's earnings and contributions required him to show that he became disabled before December 31, 2007 and has remained so ever since. The Claimant also recorded several months of earnings and contributions in early 2008. Under the *Canada Pension Plan's* so-called "proration" provision, those earnings and contributions gave the Claimant an additional opportunity to show that he became disabled between January 1, 2008 and March 31, 2008.

disability application has always been about seeking compensation for injuries inflicted upon him by the Canadian Security and Intelligence Service (CSIS). He says that the General Division made the following errors:

- It did not compel CSIS to respond his allegations of surveillance, torture and harassment and, as a result, made him sound paranoid;
- It failed to address his testimony that his health was seriously damaged as a result of microwave radiation that CSIS directed into his home;
- It ignored three medical reports showing that he suffers from disabling mental and physical symptoms caused by the Canadian government's actions;
- It ignored the fact that the government forcibly removed him from Canada multiple times starting in 2007, thereby preventing him from compiling a medical record or from making further contributions to the CPP;
- It failed to address the breach of his equality rights under the *Canadian Charter of Rights and Freedoms* (Charter); and
- It displayed bias and systematically favoured the Canadian government's case over his own.

Issue

[7] 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.²

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

² See *Department of Employment and Social Development Act* (DESDA), section 58(1).

³ See DESDA, sections 56(1) and 58(3).

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

[9] My job is to decide whether the Claimant has raised an arguable case that falls under one or more of the permitted grounds of appeal.

Analysis

[10] I have reviewed the Claimant's reasons for appealing, as well as the evidence that was available to the General Division. It is clear that the Claimant has endured hardship of one kind or another over the years. However, based on the available facts and applicable law, I don't see how the Claimant has an arguable case that the General Division erred in coming to its decision.

[11] The CPP is not an all-purpose tool for correcting wrongs that the government may have committed. It is a contributory insurance plan that provides a measure of compensation for lost income. Claimants for the CPP disability pension must prove they have impairments that make them regularly incapable of substantially gainful employment. They must also show that those impairments occurred during their coverage periods and have persisted ever since.

[12] The difficulty for the Claimant is that his coverage periods ended many years ago. He has provided medical records going back to July 2018 but none earlier.⁶ The treatment providers whose reports are on file did not start seeing the Claimant until long after his coverage ended. They would have had no direct knowledge of his condition during the relevant periods.

[13] As the General Division rightly recognized, a claimant's testimony by itself is not enough to prove disability. A claimant must also provide at least **some** medical evidence that they were disabled during their coverage periods.⁷ In this case, none of

⁴ See DESDA, section 58(2).

⁵ See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

⁶ See clinical note by Joanne Opsteen, nurse practitioner, dated July 18, 2018, GD2-236.

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377 and *Canada (Attorney General) v Dean*, 2020 FC 206.

the Claimant's reports addressed his condition before March 31, 2008. For this reason, I don't see how the General Division erred in dismissing the Claimant's appeal for lack of evidence.

[14] As for the Claimant's other allegations, I don't see arguable cases for them either:

- The Claimant argues that the General Division should have forced government officials to account for their actions, but that is not how this Tribunal works. CPP claimants bear the burden of proving that they are entitled to benefits.⁸ In this case, it was up to the Claimant to show that he was incapable of work; by contrast, neither the Minister nor the General Division were required to prove or disprove anything.
- The Claimant says that the General Division disregarded evidence that the Minister discriminated against him. However, the General Division specifically offered the Claimant an opportunity explain in detail how the Minister violated his section 15 Charter rights.⁹ The Claimant declined to take that opportunity. The Claimant also alleges that General Division itself breached the Charter, although he did not specify how.
- The Claimant insists that the General Division displayed bias against him. However, he has not offered anything to substantiate this allegation other than the fact that the General Division disagreed with him. That is not enough. Bias suggests a state of mind that is predisposed to a particular result. The threshold for a finding of bias is high, and the burden of establishing bias lies with the party alleging its existence.¹⁰ More than just suspicion is needed to support a case for bias.

⁸ *Glover v Canada (Attorney General)*, 2017 FC 363.

⁹ See General Division's letter to Claimant dated June 1, 2022, GD12.

¹⁰ The Supreme Court of Canada has stated the test for bias as, "What would an informed person, viewing the matter realistically and practically and having thought the matter through conclude?" See *Committee for Justice and Liberty v Canada (National Energy Board)* 1976 2 (SCC), 1978 1 SCR.

Conclusion

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



Member, Appeal Division