



Citation: *TD v Minister of Employment and Social Development*, 2022 SST 1078

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant (Claimant):	T. D.
Respondent:	Minister of Employment and Social Development
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Decision under appeal:	General Division decision dated August 18, 2022 (GP-21-724)
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Tribunal member:	Kate Sellar
Decision date:	October 20, 2022
File number:	AD-22-697

Decision

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

Overview

[2] T. D. (Claimant) worked at a car plant in 2001. He was let go from his job. He had medical conditions that all started on or after 2001, including a broken pinky finger, arthritis, asthma, leg cramps, insomnia, headaches, anxiety, and depression.

[3] The Claimant applied for a Canada Pension Plan (CPP) disability pension on May 13, 2019. The Minister of Employment and Social Development (Minister) refused his application. The Claimant appealed the Minister's decision to this Tribunal.

[4] The General Division dismissed the Claimant's appeal. Based on the contributions he made to the Canada Pension Plan, the Claimant had to show that he had a severe and prolonged disability on or before April 30, 1997.¹ The General Division decided that his medical conditions started years later. He said he was unable to work due to pain and weakness in 2001.²

[5] 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 giving the Claimant permission to appeal.

[6] The Claimant does not have an argument about a possible error by the General Division that has a reasonable chance of success on appeal. I cannot justify giving the Claimant permission to appeal.

Issue

[7] Could the General Division have made an error that would justify giving the Claimant permission to appeal?

¹ See paragraph 7 in the General Division's decision.

² See paragraph 22 in the General Division's decision.

Analysis

Reviewing General Division decisions

[8] 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 and the General Division's decision to decide whether the General Division may have made any errors.

[9] 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.³

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

No possible error justifying permission to appeal

[11] The Claimant has not raised a possible error by the General Division that has a reasonable chance of success.

[12] The Claimant argues that he answered a question incorrectly at the beginning of the General Division hearing about which documents he had from his file. He seems to

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

⁴ See section 58(2) of the Act.

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

be worried that this mistake about his documents caused the General Division to make an error of fact, possibly about whether he had arthritis in 1997 although that's not totally clear to me.

[13] I reviewed the recording of the hearing. The General Division member asked the Claimant whether he had all of the documents from his file. The tribunal had a Vietnamese language interpreter at the hearing. There was some confusion at first, but it seems to me that the Claimant confirmed that he had all of the documents except for the documents labelled GD6.

[14] The General Division member explained that GD6 was a set of medical documents mostly from the Claimant's workplace safety and insurance board file. It seems that the Claimant didn't have those documents in front of him. He took some time perhaps to look for them. Then he confirmed that he was ready to ahead with the hearing anyway.⁶

[15] The Claimant testified about his medical conditions. He testified that he did not have any serious medical conditions before he broke his pinky finger in 2001. He said sometimes before 2001 he had fatigue and pain in his midsection.⁷

[16] At the hearing, the General Division asked the Claimant questions about his medical conditions. The General Division listened carefully to the Claimant's answers. In the decision, the General Division explained that the Claimant's medical documents and his testimony were clear: he did not have a disability that affected his ability to work on or before April 30, 1997.

[17] In my view, there may have been some kind of misunderstanding during the hearing about which documents the Claimant had in front of him. However, there is no possible error that I can see by the General Division that would justify giving the Claimant permission to appeal.

⁶ This happened at about 25:37 in the Recording of the General Division hearing.

⁷ This testimony is at about 1:05:00 and following in the Recording of the General Division hearing.

[18] I'm satisfied that the Claimant had a fair opportunity to make the arguments he wanted to make in the case.⁸ The documents at GD6 were all about medical conditions that arose years after 1997. The problem is that the Claimant doesn't have any medical evidence and he did not give any testimony that would help him to show that he had a severe and prolonged disability by April 30, 1997. Since the Claimant didn't have that kind of evidence, the General Division dismissed the appeal.⁹

[19] I've reviewed the documents and listened to the recording of the General Division hearing in this case to see whether the General Division might have ignored or misunderstood any evidence.¹⁰ There is no evidence to suggest that the General Division might have made that kind of error.

[20] The Claimant had some medical problems in 2001 starting when he broke his pinky finger, but that does not qualify him for a CPP disability pension because the disability would need to be severe and prolonged by April 30, 1997.

Conclusion

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

Kate Sellar

Member, Appeal Division

⁸ What fairness requires depends on the circumstances, see *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC). The right to be heard is about giving people the chance to make arguments on about every fact or factor likely to impact the decision, see *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008 (FC).

⁹ See paragraph 7 in the General Division decision that explains how the April 1997 date was calculated.

¹⁰ Reviewing the file in this way is consistent with what the Federal Court talked about in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.