



Citation: *LB v Minister of Employment and Social Development*, 2022 SST 1054

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

# **Leave to Appeal Decision**

<b>Applicant:</b>	L. B.
<b>Respondent:</b>	Minister of Employment and Social Development
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<b>Decision under appeal:</b>	General Division decision dated August 30, 2022 (GP-21-1084)
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<b>Tribunal member:</b>	Neil Nawaz
<b>Decision date:</b>	October 18, 2022
<b>File number:</b>	AD-22-653

## Decision

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

## Overview

[2] The Claimant is a 54-year-old woman who spent nearly 30 years as a corrections officer at a detention centre. More than a decade ago, after injuring her neck and back, she was assigned a job at the front desk.

[3] In October 2018, the Claimant was involved in a motor vehicle accident (MVA) that left her with whiplash injuries. After attempting to return to work, she left her job for good in March 2019. Since then, she has been in two other MVAs—one in July 2019 and another in July 2022.

[4] In June 2020, the Claimant applied for a Canada Pension Plan (CPP) disability pension. She claimed that she could no longer work because of a variety of medical conditions, including chronic neck and back pain, fibromyalgia, diabetes, and anxiety and depression.

[5] The Minister refused the application because, in her view, the Claimant had not shown that she had a severe and prolonged disability.<sup>1</sup>

[6] The Claimant appealed the Minister's refusal to the Social Security Tribunal. The Tribunal's General Division a hearing held a hearing by videoconference and dismissed the appeal. It acknowledged that the Claimant had some functional limitations but found they did not prevent her from regularly pursuing all forms of substantially gainful employment. It also found that the Claimant had not made sufficient effort to obtain and maintain alternative employment.

[7] The Claimant applied for permission to appeal to the Appeal Division. In her application, she insisted that he was disabled and referred to workers compensation

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<sup>1</sup> CPP disability coverage is established by working and contributing to the CPP. In this case, the Claimant's coverage period will end on December 31, 2022.

decisions recognizing her impairments. She also referred to her three MVAs, which she had had left her with severe concussion and whiplash injuries.

[8] The Tribunal sent a letter to the Claimant reminding her that the Appeal Division can only look at specific types of error on the part of the General Division. The Tribunal asked the Claimant to provide further reasons for her appeal.<sup>2</sup> The Claimant did not file a response within the specified timeframe.<sup>3</sup>

## Issue

[9] 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 use them;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.<sup>4</sup>

[10] An appeal can proceed only if the Appeal Division first grants permission to appeal.<sup>5</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>6</sup> This is a fairly easy test to meet, and it means that claimants must present at least one arguable case.<sup>7</sup>

[11] In this appeal, I had to decide whether the Claimant raised an arguable case.

## Analysis

[12] I have reviewed the General Division's decision, as well as the law and the evidence it used to reach that decision. I have concluded that the Claimant does not have an arguable case.

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<sup>2</sup> See Tribunal's letter requesting additional information dated September 29, 2022.

<sup>3</sup> I am satisfied that the Claimant received the Tribunal's request for additional reasons. The request was sent by mail to the Claimant's residential address. The record shows that a Tribunal navigator later discussed the request with the Claimant by phone.

<sup>4</sup> See *Department of Employment and Social Development Act* (DESDA), section 58(1).

<sup>5</sup> See DESDA, sections 56(1) and 58(3).

<sup>6</sup> See DESDA, section 58(2).

<sup>7</sup> See *Fancy v Canada (Attorney General)*, 2010 FCA 63.

## **Claimants cannot succeed by rearguing their case**

[13] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the four grounds of appeal permitted under the law. A hearing at the Appeal Division is not meant to be a "redo" of the hearing at the General Division.

[14] The Claimant argues that the General Division dismissed her appeal despite evidence that she suffers from disabling conditions. I don't see a reasonable chance of success for this argument.

[15] One of the General Division's jobs is to establish facts. In doing so, it is entitled to some leeway in how it chooses to weigh the available evidence. In this case, the General Division reviewed the Claimant's medical history and concluded that she did not have severe disability as of the hearing date. It based this conclusion on the following findings:

- The Claimant's diabetes and dermatitis are under control, and the medical evidence suggests that neither condition causes her functional limitations;
- The Claimant is right-handed, and the medical evidence indicates that her carpal tunnel syndrome affects only her left hand;
- The most recent medical evidence indicates that the Claimant's physical limitations are not as extensive as she claims;
- The Claimant's age, education, and work experience would not prevent her from pursuing all forms of employment;
- The Claimant's impairments before her October 2018 MVA did not prevent her from performing her desk job;
- Although the Claimant attempted to return to her desk job on a part-time basis, she did not satisfactorily explain why her medical conditions forced her to abandon her attempt after only two months; and

- Three of the Claimant's doctors supported her efforts to keep working as recently as March 2019, the month she cut short her second return-to-work attempt.

[16] I don't see an arguable case that the General Division erred in making these findings. My review of its decision indicates that the General Division properly focused, not on the Claimant's diagnoses, but on her functional limitations. In doing so, it meaningfully analyzed the available information and came to the defensible conclusion that the Claimant did not have a condition that prevented her from regularly pursuing a substantially gainful occupation as of the hearing date.

### **WSIB claims are irrelevant at CPP hearings**

[17] The Claimant also suggests that the General Division made an error by failing to consider Ontario Workers' Safety Insurance Board (WSIB) decisions recognizing injuries that resulted in a loss of earnings, as well as non-economic losses.

[18] I don't see an arguable case here either.

[19] The General Division had good reason to disregard the Claimant's successful WSIB claims. That is because they are irrelevant to the present case. The WSIB is governed by a distinct provincial legislative regime that is unrelated to the *Canada Pension Plan*.

### **Conclusion**

[20] The Claimant has not identified any grounds of appeal that have a reasonable chance of success.

[21] Permission to appeal is refused.



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Member, Appeal Division