



Citation: *GC v Minister of Employment and Social Development*, 2023 SST 1160

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

# **Leave to Appeal Decision**

**Applicant:** G. C.

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

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**Decision under appeal:** General Division decision dated March 28, 2023  
(GP-21-2521)

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**Tribunal member:** Kate Sellar

**Decision date:** **August 24, 2023**

**File number:** AD-23-654

## Decision

[1] I'm refusing leave (permission) to appeal. The appeal will not go ahead. These are the reasons for my decision.

## Overview

[2] G. C. (Claimant) applied for a *Canada Pension Plan* (CPP) retirement pension. The Minister of Employment and Social Development (Minister) approved her application. Her retirement pension began in September 2019. On May 13, 2020, the Claimant applied for a CPP disability pension. The Minister refused the Claimant's application initially and on reconsideration.

[3] The Claimant appealed to this Tribunal. The General Division dismissed the Claimant's appeal, finding that the Claimant didn't prove her disability was severe on or before the end of her coverage period.<sup>1</sup> The General Division also decided that the Claimant isn't eligible for the post-retirement disability benefit (PRDB) because the Claimant didn't have contributions to the CPP in four of the six full calendar years before she applied.

## Issues

[4] The issues in this appeal are:

- a) Can it be argued that the General Division made an error of fact that would justify giving the Claimant permission to appeal?
- b) Does the Claimant's application to the Appeal Division set out evidence that wasn't presented to the General Division?

## **I'm not giving the Claimant permission to appeal.**

[5] I can give the Claimant permission to appeal if their application raises an arguable case that the General Division:

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<sup>1</sup> The Claimant's coverage period ended on December 31, 2008.

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made a mixed error of law and fact.<sup>2</sup>

[6] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.<sup>3</sup>

[7] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence that would justify giving permission to appeal, I must refuse permission to appeal.

**It cannot be argued that the General Division made an error of fact.**

[8] The Claimant argues that the General Division must have made an error in her appeal because she had lot of medical evidence from different doctors explaining that she has disabilities.<sup>4</sup>

[9] The Claimant has not raised an argument for an error of fact that has a reasonable chance of success.

[10] The General Division acknowledged that the Claimant has a series of diagnoses.<sup>5</sup> However, the Claimant's representative confirmed that they did not have evidence about her health conditions by December 31, 2008.<sup>6</sup>

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<sup>2</sup> See sections section 58.1(a) and (b) of the *Department of Employment and Social Development Act* (Act).

<sup>3</sup> See section 58.1(c) of the Act.

<sup>4</sup> See AD1-6.

<sup>5</sup> See paragraph 17 in the General Division decision.

<sup>6</sup> See paragraph 24 in the General Division decision.

[11] The Claimant had to show not just that she has health conditions, but that her conditions were severe and prolonged within the meaning of the CPP on or before December 31, 2008.

[12] The General Division agreed that the Claimant had a seizure disorder. But to be eligible for the disability pension, the Claimant had to show that, she was incapable regularly of pursuing any substantially gainful work.<sup>7</sup> The General Division stated that it wasn't clear from the evidence what specific tasks the Claimant couldn't do (functional limitations) that mean she was incapable regularly.

[13] I don't see support in the record or in the General Division's reasons for the argument that the General Division ignored or misunderstood the medical documents in the appeal.

[14] I cannot give the Claimant permission to appeal based on any arguable case for an error of fact.

**The Claimant hasn't set out new evidence that would justify granting permission to appeal.**

[15] The Claimant provided the following evidence:<sup>8</sup>

- A prescription record showing that she was prescribed medication for seizure disorder during her coverage period.
- A letter from her dentist showing that she had restoration on two teeth and one tooth extraction during her coverage period.
- A prescription receipt and appointment reminder card for a doctor's appointment in 2023.

[16] The Claimant has not provided new evidence that would justify giving her permission to appeal. The General Division did not dispute that the Claimant had a

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

<sup>8</sup> See AD01B-6 to 10.

seizure disorder during her coverage period. The General Division acknowledged that the Claimant says the risk that she may have a seizure at any time makes her unable to work at all, and that she has taken medication for a long time.<sup>9</sup> The General Division already had evidence that the Claimant was on medication for her seizure disorder.<sup>10</sup>

[17] The evidence the Claimant provided to the Appeal Division confirms again that she was prescribed medication during her coverage period. It confirms she had dental work. It confirms that she still sees doctors today.

[18] In my view, these documents cannot form the basis for permission to appeal as new evidence. They don't seem relevant to the issue of whether her disabilities were severe and prolonged within the meaning of the CPP on or before the end of her coverage period.

[19] In my view, there needs to be a connection between the new evidence and the issues the Tribunal needs to decide to justify giving the Claimant permission to appeal. That connection is lacking here.

[20] The Claimant didn't make any arguments about the General Division's decision that she wasn't eligible for the PRDB. However, I reviewed the record and see no possible argument that the General Division misunderstood or ignored the evidence about whether the Claimant had sufficient contributions to meet the criteria for the PRDB.<sup>11</sup>

## Conclusion

[21] I'm refusing to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar  
Member, Appeal Division

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<sup>9</sup> See paragraph 20 in the General Division decision.

<sup>10</sup> See GD2-82.

<sup>11</sup> This review is consistent with what the Federal Court expects of the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.