



Citation: *RF v Minister of Employment and Social Development*, 2023 SST 1274

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: R. F.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated June 14, 2023
(GP-22-715)

Tribunal member: Kate Sellar

Decision date: **September 14, 2023**

File number: AD-23-742

Decision

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

Overview

[2] R. F. (Claimant) applied for a *Canada Pension Plan* (CPP) disability pension on July 15, 2021. She was already receiving early CPP retirement pension benefits when she applied. Therefore, the Minister of Employment and Social Development (Minister) considered her entitlement to the disability pension and to the post-retirement disability benefit (PRDB). The Minister denied both applications. On reconsideration, the Minister allowed the application for the PRDB only.

[3] The Claimant appealed the decision about the disability pension to this Tribunal. The General Division dismissed the appeal, finding that the Claimant isn't entitled to the disability pension. The Claimant couldn't prove that her disability was severe within the meaning of the CPP by July 31, 2020 (the end of her coverage period).

Issues

[4] The issues in this appeal are:

- a) Could the General Division have failed to provide the Claimant with a fair process?
- b) Could the General Division have made an error of fact that would justify giving the Claimant permission to appeal?
- c) Does the application 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:

- 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;
- made a mixed error of law and fact.¹

[6] I can also give the Claimant permission to appeal if their application sets out evidence that wasn't presented to the General Division.²

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

There's no argument that the General Division failed to provide a fair process.

[8] The Claimant noted in her appeal that the General Division proceeded in a way that was unfair.³ However, it seems that she's arguing that the **outcome** of the General Division's decision wasn't fair because she should have received the benefit she applied for. But she raised no specific issues with the **process**.

[9] As a result, I cannot conclude that the General Division may have failed to provide the Claimant with a fair process.

There's no argument about an error of fact that would justify giving the Claimant permission to appeal.

[10] The Claimant argues that the General Division ignored the facts about her appeal, specifically the following:

¹ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act* (Act).

² See section 58.1(c) of the Act.

³ See AD1-3 and following.

- She was diagnosed with pulmonary fibrosis in 2013, and that this condition is progressive and fatal. The progression of the illness varies between patients.
- She had restrictions that impacted her ability to work during her coverage period.
- She could not be retrained, and she wasn't capable regularly of working anywhere else. She was able to request breaks, go home, or go to the hospital when she had trouble breathing or was having an anxiety attack.⁴

[11] The Claimant hasn't raised an arguable case that the General Division made an error of fact. The General Division recognized that the Claimant had pulmonary fibrosis, that she had restrictions that affected her work at her job, and that she had health problems.⁵

[12] The General Division decided that the Claimant's disability wasn't severe within the meaning of the CPP by July 31, 2020. That is, she wasn't incapable regularly of pursuing any substantially gainful work by July 31, 2020.⁶ She continued to work full time in regular job until June 2021. She was "completing her duties slower than in years past," but she was able to work within her limitations until June 2021.⁷

[13] I cannot conclude that the General Division may have ignored the Claimant's evidence about her conditions, limitations, and her ability to work. The General Division acknowledged the evidence the Claimant says was important, although it ultimately reached a conclusion the Claimant doesn't agree with.

[14] The Claimant feels that she is being punished for continuing to work when she wasn't well. However, to be eligible for the CPP disability pension a person must be incapable regularly of pursuing any substantially gainful work on or before the end of their coverage period. In this case, the General Division concluded that the Claimant

⁴ See AD1-3 and following.

⁵ See paragraphs 20, 26, 27, 32, and 33 in the General Division decision.

⁶ See section 42(2) in the *Canada Pension Plan* (CPP).

⁷ See paragraph 40 in the General Division decision.

was working regularly within her limitations until June 2021, so she was eligible for the PRDB, but not the disability pension.

[15] The Claimant hasn't provided any arguments that have a reasonable chance of success about the General Division ignoring or misunderstanding the evidence. I cannot grant permission to appeal based on a possible error of fact by the General Division.

The Claimant didn't set out any new evidence.

[16] The Claimant didn't set out any new evidence in support of her appeal. Accordingly, new evidence cannot form the basis for giving the Claimant permission to appeal.

Conclusion

[17] I've refused the Claimant permission to appeal. This means that the appeal about the disability pension will not go ahead.

Kate Sellar
Member, Appeal Division