



Citation : *TD v Minister of Employment and Social Development*, 2023 SST 1701

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. D.
Representative: D. S.
Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated July 24, 2023
(GP-22-530)

Tribunal member: Kate Sellar
Decision date: **November 28, 2023**
File number: AD-23-958

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] T. D. (Claimant) stopped working as a self-employed childcare worker in 2021. She applied for a *Canada Pension Plan* (CPP) disability pension in March 2021. She explained that she couldn't work anymore because of pain and instability in her leg. The Minister of Employment and Social Development (Minister) refused her 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 show that her disability was severe within the meaning of the CPP on or before December 31, 2017 (the last day of her coverage period based on her contributions to the CPP).

Issues

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of law by focusing too squarely on the Claimant's work history and contributions when deciding whether her disability was severe?
- b) 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 her 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; or
- made an error applying the law to the facts.¹

[6] I can also give the Claimant permission to appeal if her 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 that could have an impact on the appeal, I must refuse permission to appeal.

No arguable case for an error of law by the General Division

[8] The Claimant argues that the General Division made an error by focusing only on the work she completed, her contributions to the Canada Pension Plan, and her earnings, rather than focusing on her medical conditions and functional limitations.³

[9] The Claimant must show that her disability became severe and prolonged within the meaning of the CPP on or before the end of her coverage period. Her coverage period is calculated based on her contributions to the CPP. As a result, both contributions to the CPP and the timing of the onset (start) of the disability matters.⁴

[10] The General Division had to focus on the impact of the Claimant's disability on her ability to work on or before the end of the coverage period. The General Division doesn't have the ability to change or ignore the coverage period based on financial need.

[11] To be eligible for the disability pension, the disability must be severe within the meaning of the CPP. A severe disability makes a person incapable regularly of pursuing any substantially gainful occupation.⁵ The capacity to work is relevant when deciding

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

² See section 58.1(c) in the Act.

³ See AD1-12.

⁴ See sections 42 and 44 in the Canada Pension Plan (CPP).

⁵ See section 42(2)(a) in the CPP.

whether a disability is severe. The Claimant's work history, which continued for years after the end of her coverage period, was relevant to the question of whether the Claimant's disability was severe.

[12] The General Division considered the Claimant's medical history in some detail. The General Division concluded (based on all the evidence) that at the end of the coverage period, the Claimant was still capable of (and was actually) working.⁶ The General Division decided as follows:

The medical evidence doesn't show that the [Claimant] had functional limitations that affected her ability to work by December 31, 2017. As a result, she hasn't proven she had a severe disability. With surgery, there was significant improvement in her functional ability. I recognize that she was not back to the way she was before the injury, as she has stated. But the improvement in her function including well-managed pain, and ability to perform her daily activities including walking, standing and stairs, with no restrictions except for lifting, all support she had capacity to work. In fact, she did continue her home childcare business until 2021.⁷

[13] The Claimant had pain in May 2017 and had right sciatic nerve neurolysis again in September 2017. The Claimant's ability to perform daily activities improved, and the General Division made note of the parts of the medical reports that documented those improvements.⁸

[14] The Claimant argues that the General Division focussed too squarely on the work that she did and the money that she earned, rather than on her medical reports which documented the challenges she experienced because of her medical conditions.⁹ She feels that she's being punished for choosing to work despite the pain and distress she has experienced since 2010. Her medical condition and emotional well-being are deteriorating, and she continues to follow treatment recommendations.

⁶ See paragraph 27 in the General Division decision: "The Appellant told me that she agreed with Dr. Bain's information, but her condition had progressed since then."

⁷ See paragraph 28 in the General Division decision.

⁸ See paragraph 27 in the General Division decision.

⁹ See AD1-12.

[15] The Claimant hasn't raised an arguable case that the General Division made an error in the way that it understood and applied the law. The General Division was required to consider whether the Claimant showed her disability was severe. A severe disability isn't defined as a person with diagnosed medical conditions. It's about whether the Claimant was incapable regularly of pursuing any substantially gainful occupation. Every part of that definition has meaning.¹⁰ Part of considering whether a disability is severe is about the Claimant's ability to work. The General Division is required to consider what the impact of her conditions was on her ability to work. In this case, that involved considering the work that the Claimant was doing and what it tells us about whether her disability was severe.

[16] I cannot find that the General Division may have misunderstood the legal definition of a severe disability.

No new evidence that justifies granting permission to appeal

[17] In support of her appeal, the Claimant provided:

- Outpatient consult notes from a pain clinic dated August 30, 2023 that describe a procedure (injection) she had to try to address the pain she experiences;
- An after-visit summary dated October 6, 2023 confirming an upcoming appointment for December 2023; and
- Appointment details for the next injection for November 15, 2023.¹¹

[18] The Claimant needs to show that her disability became severe and prolonged within the meaning of the CPP on or before December 31, 2017.

[19] The reports are not arguably relevant to that issue, so they will not form the basis for permission to appeal.

¹⁰ See *Villani v Canada (Attorney General)*, 2001 FCA 248.

¹¹ See AD1-4 to 7.

[20] I've reviewed the record at the General Division. I'm satisfied that the General Division didn't ignore or misunderstand the evidence.¹² The Claimant is in a difficult position because she has functional limitations, and she isn't working anymore. She wants the Tribunal to focus on her medical reports that explain the physical and emotional limitations she's experiencing now. The Claimant asks the Appeal Division to focus on that medical information.

[21] However, the issue the General Division had to decide was whether the Claimant's disability became severe and prolonged on or before the end of her coverage period. The last day of her coverage period was December 31, 2017. The Claimant was in a different situation medically then than she is now.

[22] I cannot conclude that the General Division may have made an error – it applied the law about the coverage period to the facts about the Claimant's disability, and the Claimant hasn't pointed to any error that the General Division might have made that has a reasonable chance of success.

Conclusion

[23] I'm refusing to give Claimant permission to appeal. This means that the appeal will not go ahead.

Kate Sellar
Member, Appeal Division

¹² For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.