



Citation: *TM v Minister of Employment and Social Development*, 2024 SST 143

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: T. M.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated December 4, 2023
(GP-22-1017)

Tribunal member: Kate Sellar

Decision date: February 15, 2024

File number: AD-24-89

Decision

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

Overview

[2] T. M. (Claimant) stopped working as a general cafeteria helper and applied for a Canada Pension Plan (CPP) disability pension. She started receiving the pension in January 2006. In 2013, she started working part time. She continued working every year after that until she was laid off during the pandemic.

[3] The Minister of Employment and Social Development (Minister) wrote to the Claimant in July 2020 and explained that they were reviewing her file. The Minister gathered information about the Claimant's earnings. In August 2021, the Minister explained that the Claimant wasn't eligible for any of the disability pension payments she received after April 2018.

[4] The Claimant appealed to this Tribunal. The General Division dismissed the appeal, finding that the Minister proved that the Claimant stopped being disabled within the meaning of the CPP in April 2018.

[5] The Claimant made an application to the Appeal Division stating that she disagreed with the outcome at the General Division.¹ The Claimant said she has a disability, and her disability pension should not have stopped.

Issue

[6] The issues in this appeal are:

- a) Could the General Division have made an error that would justify giving the Claimant permission to appeal?

¹ The Appeal Division gave the Claimant an additional chance to provide more information to the Appeal Division if she chose to do so.

- b) Does the application set out evidence that wasn't presented to the General Division that would justify giving the Claimant permission to appeal?

I'm not giving the Claimant permission to appeal

[7] I can give the Claimant permission to appeal if the 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.²

[8] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.³

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

The Claimant hasn't raised an arguable case that the General Division made an error

[10] The Claimant hasn't raised any argument about a possible error by the General Division that has a reasonable chance of success. She argues that she cannot earn much income because of her disability. She does not think that her disability pension should have stopped.⁴

² See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

³ See section 58.1(c) in the Act.

⁴ See AD1-1.

[11] The General Division had to decide whether the Claimant stopped having a severe disability within the meaning of the CPP in 2018. The disability pension stops being payable when the Claimant stops having a severe and prolonged disability within the meaning of the CPP.⁵ The Minister is responsible for proving that it's more likely than not that the Claimant stopped being disabled when they stopped the payments in April 2018.⁶

[12] The General Division found the following:⁷

- The Claimant worked from October 2015 to December 2018 as a general kitchen helper. She stopped working because of a shortage of work. Her earnings in 2013, 2014, and 2015 were under \$6,000.00. In 2016, her earnings were \$12,159.00. Her earnings in 2017 were \$11,868.00.
- The Claimant worked from December 2018 to April 2020 as a general helper in a different kitchen until she was laid off during the pandemic. She worked 37.5 hours per week and earned \$15.25 an hour.
- In 2018, the Claimant earned \$16,542.00. In 2019, she earned \$29,842.00.
- In 2018, CPP regulations stated that substantially gainful earnings were \$16,029.96. In 2019, they were \$16,347.60. Accordingly, the Claimant made more than substantially gainful earnings in both years.
- The Claimant worked continuously, and her attendance was good. She received some accommodation at work: she was allowed to sit when needed and she wasn't required to do a lot of walking. But the expectations at work weren't lowered in a way that meant the work was benevolent.

⁵ See sections 70(1)(a) and 42(2) in the *Canada Pension Plan* (CPP).

⁶ See *Atkinson v Canada (Attorney General)*, 2014 FCA 187.

⁷ See paragraphs 29 to 48 in the General Division decision.

- The Claimant's age, education, ability to communicate in English, and experience in the food service sector means that she was employable in the real world in 2018.

[13] The Minister satisfied the General Division that by April 2018, the Claimant was no longer incapable regularly of pursuing any substantially gainful occupation. She was continuously working full-time as a kitchen helper and making more than a substantially gainful income in 2018 and 2019.

[14] The Claimant hasn't raised any error the General Division might have made in its decision about the work she did starting in 2018 and what that work tells us about her regular ability to make a living despite her medical conditions.

[15] I cannot give the Claimant permission to appeal. The nature of the Claimant's medical conditions and the limitations she has in terms of her ability to work today are not relevant to the question the General Division had to decide.

The Claimant hasn't set out evidence that wasn't already presented to the General Division

[16] The Claimant hasn't set out any new evidence that wasn't already presented to the General Division. Accordingly, new evidence cannot form the basis for permission to appeal either.

[17] I've reviewed the record.⁸ I'm satisfied that the General Division hasn't ignored or misunderstood the evidence in the record about the nature of the Claimant's work and what it tells us about her disability no longer being severe within the meaning of the CPP. The evidence showed that she earned substantially gainful income in 2018 and 2019. I don't see any evidence that the General Division may have missed or misunderstood in terms of the income she earned, the work she completed, or how

⁸ The Federal Court's says the Appeal Division should complete this kind of review in a case called *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

reliable she was. I also see no evidence that the General Division may have missed about whether the Claimant's employer was benevolent.

Conclusion

[18] I've refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division