Citation: *LB v Minister of Employment and Social Development*, 2024 SST 92

Social Security Tribunal of Canada
Appeal Division

Leave to Appeal Decision

Applicant:	L. B.
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated November 28, 2023 (GP-23-967)

Tribunal member:	Kate Sellar
Decision date:	**January 30, 2024**
File number:	AD-24-90

Decision

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

Overview

[2] L. B. (Claimant) had two workplace accidents. She applied for a Canada Pension Plan (CPP) disability pension in 2005. The Minister of Employment and Social Development (Minister) refused her application. She appealed to the Review Tribunal (as it was called then). After a hearing, the Review Tribunal dismissed the Claimant's appeal in 2008, finding that she wasn't eligible for the disability pension. The Claimant didn't appeal.

[3] In April 2022, the Clamant applied for CPP disability benefits again. She explained that she had been unable to work since 2005 because of her disability. The Minister refused her application initially and in a reconsideration letter. The Claimant appealed to this Tribunal.

[4] The General Division dismissed the Claimant's appeal. The General Division applied the rule against deciding something that has already been decided. In Latin, that rule is called *res judicata*.

Issue

[5] The issues in this appeal are:

a) Has the Claimant raised an arguable case that the General Division made an error of fact by ignoring her medical evidence?

b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[6] 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.[1]

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

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

There's no arguable case that the General Division made an error of fact by ignoring the Claimant's medical evidence.

[9] The Claimant argues that the General Division made an error of fact by ignoring her medical evidence, especially recent medical reports (including an x-ray and MRI results). She explains that she has unresolved pain that was caused by the workplace injury. The pain has worsened over time.[3]

[10] The General Division **did** discuss both an imaging report from August 2021 and the Claimant's MRI from August 2023.[4]

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[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 AD1-4.
[4] See paragraphs 29 to 31 in the General Division decision, discussing documents at GD2-187, GD2-180, GD6-2, and GD2-183 and 186.

[11] However, the General Division found that these reports didn't help the Claimant to show that the 2008 hearing at the Review Tribunal was unfair.[5]

[12] I cannot conclude that the General Division ignored these reports. I understand that the Claimant wanted the new reports to form the basis for hearing her appeal for the disability pension. However, the General Division applied the law against hearing a matter that has already been heard. The reports didn't change the outcome of that analysis. The Claimant hasn't raised an arguable case that the General Division made an error in its discussion of these reports.

[13] The Claimant also provided some medical documents to the General Division on November 19, 2024, just after the hearing.[6] The General Division wrote to the Claimant, explaining that it wouldn't consider the late evidence because it wasn't relevant to the question of whether the General Division should apply the rule against deciding something that's already been decided.[7] Refusing to consider these late reports is different from making an error of fact by ignoring them. Again, the General Division explained that they weren't relevant to the issue it had to resolve.[8]

No new evidence that would justify granting permission to appeal

[14] The Claimant attached some medical documents to her application to the Appeal Division. The Claimant already presented almost all these reports to the General Division.[9] The report that I believe the Claimant hadn't already presented to the General Division is the MRI report of the Claimant's right shoulder from 2022.[10]

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[5] See paragraphs 29 to 32 in the General Division decision.
[6] See GD7.
[7] See GD8.
[8] I've considered whether refusing to accept these late reports raises any other possible error that would justify giving the Claimant permission to appeal. I cannot conclude that the General Division failed to provide the Claimant with a fair process here, given that the General Division considered whether the reports were relevant and then issued its reasons for not considering them.
[9] The Claimant provided the Appeal Division with copies of the reports that were already available to the General Division at GD2-180, GD6-2, GD2-202, GD2-215, and GD2-287. The Claimant also provided a copy of GD7-4, which the General Division decided not to consider in its decision at GD8.
[10] See AD1-15.

[15] The MRI report from 2022 isn't relevant to the issue I need to resolve in this decision. I must decide whether the General Division may have made an error in its decision applying the rule against deciding something that has already been decided.

[16] The Review Tribunal decided in 2008 that the Claimant's disability wasn't severe within the meaning of the CPP on or before the end of her coverage period in 2007. There's nothing about the 2022 MRI report that is relevant to the question of whether the General Division made an error in its decision. The General Division was only deciding about whether it could hear again the same issue the Review Tribunal already heard and decided. This 2022 MRI report is from many years after the end of the Claimant's coverage period. It is also dated long after the Review Tribunal's decision about the Claimant's disability during her coverage period.

[17] Since the report isn't relevant to the question of whether the General Division might have made an error, it cannot form the basis for permission to appeal.

[18] I've reviewed the record in this appeal.[11] I'm satisfied that the General Division didn't ignore or misunderstand the evidence when it decided not to hear the same issue the Review Tribunal already decided. The General Division considered and applied the available evidence to the law about deciding questions that have already been decided.[12] The General Division also considered in detail whether applying the rule against deciding something that has already been decided would result in an injustice.

Conclusion

[19] I've refused to give the Claimant permission to appeal. This means that the appeal won't proceed.

Kate Sellar
Member, Appeal Division

[11] The Federal Court explained the Appeal Division's role in performing this kind of review in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.
[12] See paragraphs 18 to 22 in the General Division decision considering the pre-conditions for applying the rule against deciding something that's already been decided. Paragraphs 26 to 39 explain how the General Division concluded that applying the rule wouldn't cause injustice.