



Citation: *JK v Minister of Employment and Social Development*, 2024 SST 21

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. K.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated October 25, 2023
(GP-23-1330)

Tribunal member: Kate Sellar

Decision date: January 5, 2024

File number: AD-23-1080

Decision

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

Overview

[2] J. K. (Claimant) applied for a Canada Pension Plan (CPP) disability benefit on July 18, 2011. The Minister of Employment and Social Development (Minister) refused the application initially and on reconsideration. The Claimant appealed to this Tribunal. On January 27, 2015, the General Division dismissed the Claimant's appeal. The Claimant did not appeal that decision to the Appeal Division.

[3] The Claimant applied again on December 24, 2021. The Minister refused the application initially and on reconsideration. The Claimant appealed to the General Division. The General Division dismissed the appeal, applying the rule against deciding something that has already been decided (that rule is called *res judicata*, I'll refer to it as the rule).

Issues

[4] The issues in this appeal are:

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

[5] 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

[6] I can also give the Claimant permission to appeal if the 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 would justify giving permission to appeal, I refuse permission to appeal.

The Claimant hasn't raised an arguable case for an error by the General Division.

[8] The Claimant argues the following:

- She has a severe and prolonged disability. She provided information about her diagnoses, functional limitations, and ongoing treatment efforts.
- There was a mix up with the medical documents (specifically some lab work) that she wasn't aware of until the summer of 2023.
- She understood that her General Division hearing in 2015 would have three people in attendance but there was only one other person on the call with her.

[9] The Claimant has not raised an arguable case for any error by the General Division.

[10] The General Division decided that the Claimant's appeal met all three of the pre-conditions for applying the rule. The Claimant has not challenged that approach or the

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

² See section 58.1(c) in the Act.

conclusions the General Division drew: the parties and the issues were the same as they were at the General Division, and the General Division's 2015 decision was final.³

[11] The General Division considered whether applying the rule would result in an injustice. This General Division considered that the General Division held a hearing and there was no evidence that the General Division denied the Claimant a fair process. The Claimant argued that the blood work in the file was inaccurate, but the General Division found that this argument didn't give rise to a natural justice error by the General Division.⁴

[12] The Claimant now argues that she expected three people to be at the General Division hearing. The hearing was attended by the Claimant and the General Division member, and I see no evidence of a lack of fair process on that basis.

[13] The Claimant has reasons why she would like to have another hearing about her eligibility for the disability pension. However, to get permission to appeal, she must show that the General Division may have made an error. She has not met that requirement here.

The Claimant hasn't set out evidence that wasn't presented to the General Division that is relevant to the question on appeal.

[14] In support of her request for permission to appeal, the Claimant provided a report from the Mayo Clinic from 2017.⁵

[15] This medical document is not arguably relevant in this situation. The Claimant hasn't been able to show an arguable case for any error by the General Division. The General Division dismissed the appeal by applying the rule against deciding something that has already been decided.

³ See paragraphs 15 to 17 in the General Division decision. The General Division applied the three preconditions for applying the rule against deciding something that has already been decided. The preconditions are described by the Supreme Court of Canada in *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44.

⁴ See paragraphs 19 and 20 in the General Division decision.

⁵ See AD1B.

[16] So while the Claimant has set out new medical evidence that the General Division didn't have, that medical evidence cannot form the basis of a permission to appeal. The medical evidence isn't arguably relevant given the key issue in this appeal: the Claimant's eligibility for the disability pension has already been decided by the General Division and they applied the rule against deciding that question again.

[17] I've reviewed the file and I don't see any other evidence that the General Division may have misinterpreted in reaching its decision to apply the rule.⁶

Conclusion

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

Kate Sellar

Member, Appeal Division

⁶ The Federal Court discusses this type of review in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.