



Citation: *GC v Minister of Employment and Social Development*, 2024 SST 234

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** G. C.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** General Division decision dated December 4, 2023  
(GP-22-952)

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**Tribunal member:** Kate Sellar

**Decision date:** **March 6, 2024**

**File number:** AD-24-114

## **Decision**

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

## **Overview**

[2] G. C. (Claimant) applied for a Canada Pension Plan (CPP) disability pension on July 26, 2021. The Minister of Employment and Social Development (Minister) refused his application initially and in a reconsideration letter. The Claimant appealed to this Tribunal.

[3] The General Division dismissed the Claimant's appeal, finding that he didn't show that his disability became severe within the meaning of the CPP on or before December 31, 2011 (the last day of his coverage period).

## **Issues**

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact that would justify giving the Claimant permission to appeal?
- 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 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.<sup>1</sup>

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

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

### **No arguable case for an error of fact**

[8] The Claimant argues that the General Division made errors of fact by ignoring important evidence about Tourette syndrome, his vertigo, and the reasons he didn't seek medical support during the coverage period.

[9] The General Division is presumed to have considered all the evidence, even if it doesn't discuss all the evidence in the decision. The Claimant can overcome that presumption by showing that the evidence was important enough that the General Division should have discussed it.<sup>3</sup>

[10] The Claimant argues that there are important things about Tourette syndrome that the General Division ignored or misunderstood. He points out that Tourette syndrome is:

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

<sup>2</sup> See section 58.1 (c) of the Act.

<sup>3</sup> See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.

- a substantial impairment disability which is present from birth;
- involuntary, resulting in physical tick and or verbal rambling and or coprolalia (cursing and threatening speech);
- incurable; and
- extremely mentally exhausting and socially devastating.<sup>4</sup>

[11] I cannot conclude that the General Division may have ignored or misunderstood important evidence about Tourette syndrome. The General Division had to decide whether the Claimant became incapable regularly of pursuing any substantially gainful occupation on or before the end of his coverage period.<sup>5</sup> This is much more specific than deciding whether the Claimant had any diagnosis since he was young or since birth.

[12] For the CPP disability pension, the focus isn't on medical diagnoses. The focus is on the affect of the medical conditions on the claimant's ability to work. As the General Division explained, claimants need some medical evidence to support the application for the disability pension.<sup>6</sup> The Claimant had supporting documentation about having Tourette syndrome in an assessment in 2014.

[13] The General Division reviewed the Claimant's medical evidence and his testimony. The General Division decided that the Claimant didn't show that he was incapable regularly of pursuing any substantially gainful occupation on or before December 31, 2011.<sup>7</sup> The General Division considered the Claimant's own description of the impact of his Tourette syndrome on his functioning.<sup>8</sup>

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<sup>4</sup> See AD1.

<sup>5</sup> See section 42(2)(a) of the *Canada Pension Plan* (CPP).

<sup>6</sup> See paragraph 16 in the General Division decision.

<sup>7</sup> See paragraphs 22 to 30 in the General Division decision.

<sup>8</sup> See paragraph 22 in the General Division decision.

[14] There's no arguable case that the General Division misunderstood or ignored important evidence about Tourette syndrome generally. The General Division decision discusses on the impact of Tourette syndrome on the Claimant.

[15] The Claimant also argues that the General Division ignored:

- his vertigo and the neuropathic element of his disability; and
- the reasons he didn't seek more medical support, which involved fear.

[16] There's no arguable case that the General Division ignored the evidence the Claimant raises. The Claimant did provide a document that stated that he had benign positional vertigo for four to five days in 2007.<sup>9</sup> I cannot conclude that it's arguable this document was important enough that the General Division needed to discuss it. It was a document describing a symptom several years before the end of the Claimant's coverage period, during a year in which he was working.

[17] Similarly, I cannot conclude that it's arguable the General Division needed to discuss the reasons the Claimant didn't seek medical support. The Claimant's evidence at the General Division hearing focussed on the idea of gathering hospital records for the period required. The Claimant subsequently gathered that evidence.<sup>10</sup> The Claimant didn't focus on the idea that there were no records to be had a result of disability-related challenges in accessing health care. There's no arguable case that the General Division ignored such evidence.

## **No new evidence**

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

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<sup>9</sup> See GD21-9 and 10.

<sup>10</sup> See GD21 and paragraphs 15 and 16 in the General Division decision.

[19] I've reviewed the record and am satisfied that the General Division didn't ignore or misunderstand the evidence.<sup>11</sup> The Claimant notes that the decision was not in his favour. However, there's no arguable case here that the General Division made an error on which I can grant permission to appeal.

## **Conclusion**

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

Kate Sellar  
Member, Appeal Division

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<sup>11</sup> For the need for this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.