



Citation: *BY v Minister of Employment and Social Development*, 2024 SST 22

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	B. Y.
Representative:	Tadesse Gebremariam
Respondent:	Minister of Employment and Social Development

Decision under appeal:	General Division decision dated September 22, 2023 (GP-22-1208)
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Tribunal member:	Kate Sellar
Decision date:	January 5, 2024
File number:	AD-23-1088

Decision

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

Overview

[2] B. Y. (Claimant) works as a Personal Support Worker (PSW). She had bilateral knee replacements in October 2021 and took time off work to recover. She returned to working part-time at three different placements by July 2022.

[3] The Claimant applied for a Canada Pension Plan (CPP) disability pension on December 17, 2021. The Minister of Employment and Social Development (Minister) refused her application initially and on reconsideration. The Claimant appealed to this Tribunal.

[4] The General Division dismissed her appeal, finding that her disability wasn't severe within the meaning of the CPP on or before the day the General Division held the hearing. The Claimant had functional limitations that limited her ability to work. But once she recovered from knee surgery, she returned to work and resumed earning a substantially gainful income.

Issues

[5] 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?

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, I must refuse permission to appeal.

The Claimant hasn't raised an argument for an error by the General Division that would justify giving her permission to appeal.

[9] The Claimant seems to argue that the General Division made an error of law (or perhaps an error in applying the law to the facts) because she meets the legal requirements for a disability pension, and yet the General Division dismissed her appeal.³ The Claimant says the medical evidence shows that her disability is severe and prolonged within the meaning of the CPP.

[10] The Claimant hasn't raised an arguable case for an error of law or an error applying the law to the facts. Having a severe disability means that a person is incapable regularly of pursuing any substantially gainful occupation.⁴ To access the disability pension, a severe and prolonged disability must start on or before the end of the coverage period, and it must be continuous. A prolonged disability must be long continued and of indefinite duration, or likely to result in death.

¹ See sections 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 AD1-2 and 3.

⁴ See section 42(2)(a) of the *Canada Pension Plan* (CPP).

[11] The General Division explained that the purpose of the CPP disability pension is not to tide claimants over for a temporary period when a medical condition prevents them from working.⁵ I see no argument here that the General Division misunderstood the definition of a severe and prolonged disability within the CPP.

[12] The Claimant argues that the General Division should have found her eligible for the disability pension because her disability prevented her from working at any job while she recovered from her surgery. I understand from the record that she received EI sick benefits, but they ran out before she was recovered and ready to return to work.⁶

[13] There's no arguable case that the General Division made an error applying the facts about the Claimant's ability to work to the disability pension requirements in the CPP.

[14] The Claimant had knee surgery, took time away from work to recover, and then returned to work in 2022. The General Division discussed the evidence about the Claimant's functional abilities and her work, including the fact that she was a casual (part-time) worker working a total of 30 to 40 hours per week, had good attendance, earned more than \$20 per hour, and didn't require help from others.⁷ The Claimant was temporarily unable to work at her regular job after a surgery, and then ultimately she returned to her regular job. She does experience pain when she works, and her hours fluctuate. However, she hasn't raised an arguable case that the General Division made an error in its decision about her ability to work.

⁵ See paragraph 18 in the General Division decision, and the corresponding Federal Court of Appeal decisions the General Division discussed in footnote 7.

⁶ This is discussed at about 19:00 in the recording of the General Division decision.

⁷ See paragraph 39 in the General Division decision.

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

[15] The Claimant attached and referred to several medical documents. These documents were already presented to the General Division, so they cannot form the basis for giving the Claimant permission to appeal.⁸

[16] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand the evidence.⁹

[17] The General Division accepted that the Claimant was working three days a week. She testified that she pushes herself to work and that she has pain, but she continues to be able to work and earn a living.¹⁰

Conclusion

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

Kate Sellar

Member, Appeal Division

⁸ At AD1, the Claimant provided again the documents at GD1-8, GD1-9, GD1-11, and GD2-87.

⁹ The Federal Court discussed that type of review in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

¹⁰ This is discussed at about 14:50 in the recording of the General Division hearing.