



Citation: *KS v Minister of Employment and Social Development*, 2024 SST 252

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: K. S.

Representative: P. S.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated October 3, 2023
(GP-23-663)

Tribunal member: Kate Sellar

Decision date: March 12, 2024

File number: AD-24-28

Decision

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

Overview

[2] K. S. (Claimant) was injured in a car accident in November 1994. She has thoracic outlet syndrome. She applied for a Canada Pension Plan (CPP) disability pension on May 25, 2022 (this was not her first application). The Minister of Employment and Social Development (Minister) refused her application initially and in a reconsideration letter. The Claimant appealed to this Tribunal.

[3] The General Division dismissed her appeal, finding that she didn't show that her disability was severe and prolonged by December 31, 1995 (the last day of her coverage period). The General Division decided that although she had functional limitations that affected her work, she still had some capacity to work after her injury. The General Division considered the Claimant's work and her earnings in 2008, 2009, and 2014.

Issue

[4] The issues in this appeal are:

- a) Is there an arguable case that the General Division failed to provide the Claimant with a fair process?
- 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.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, I must refuse permission to appeal.

No arguable case for an error by the General Division

[8] The Claimant argues that the General Division proceeded in a way that was unfair. She stated she needed time to collect and provide more medical information.³ I gave the Claimant some time to collect and provide the medical information at the Appeal Division level, but she didn't provide anything further.

[9] There's no arguable case that the General Division proceeded in a way that was unfair. What fairness requires depends on the circumstances.⁴ Included in fairness is the right to be heard.

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

² See section 58.1(c) of the Act.

³ She asked to have until February 29, 2024 and the Tribunal confirmed that deadline in a letter dated January 10, 2024.

⁴ See *Baker v Canada (Minister of Citizenship and Immigration)*, 1999 CanLII 699 (SCC).

[10] The Claimant hasn't raised anything specific about the General Division's approach that suggests she may not have had a fair process. It seems that the Claimant disagrees with the result, but she hasn't raised anything specific about the fairness of the process for me to consider. She hasn't pointed to any error in the way the General Division reached its decision that could amount to an error.

The Claimant hasn't set out any new evidence

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

[12] I've reviewed the record. I'm satisfied that the General Division didn't ignore or misunderstand the evidence.⁵ The General Division noted (and the medical evidence supports) that the Claimant's thoracic outlet syndrome results in functional limitations.

[13] However, there is also significant evidence about her capacity for work. At the hearing, the Claimant confirmed that she worked in 2008, 2009, and 2014.⁶ In 2008 and 2009, she was processing orders in Punjabi for a furniture shop. It was not heavy work. She was laid off for shortage of work. In 2014, she was berry picking seasonally from about May or June to October. The work was physical in nature. She worked for 6 to 8 hours a shift. The General Division relied on this testimony in support of its conclusions about the Claimant's capacity for work.⁷

[14] I cannot conclude that there's an arguable case the General Division got these facts wrong or made an error applying the law about CPP disability pensions to these facts. A disability isn't severe within the meaning of the CPP if the Claimant has some capacity for work and cannot show that efforts to get and keep work failed because of the disability.⁸

⁵ For the need for this type of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

⁶ See earnings listed at GD2-109 to 110. The Claimant's testimony about working these years starts at approximately 24:13 in the recording of the General Division hearing and continues to about 31:58.

⁷ See paragraphs 37 to 43 in the General Division decision.

⁸ See *Inclima v Canada (Attorney General)*, 2003 FCA 117.

Conclusion

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

Kate Sellar
Member, Appeal Division