



Citation: *SV v Minister of Employment and Social Development*, 2024 SST 421

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. V.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated February 16, 2024
(GP-23-1815)

Tribunal member: Kate Sellar

Decision date: **April 24, 2024**

File number: AD-24-279

Decision

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

Overview

[2] The Claimant applied for a Canada Pension Plan (CPP) disability pension in April 2018. The Minister of Employment and Social Development (Minister) denied her application on December 10, 2018.

[3] On May 9, 2023, the Claimant asked the Minister to reconsider its decision. The Minister refused to reconsider because the Claimant asked more than 90 days after she was notified of the decision.

[4] The Claimant appealed to this Tribunal. The General Division dismissed the appeal. The General Division decided that the Claimant can't have more time to ask for reconsideration.

[5] The General Division found that:

- The Claimant's request for reconsideration was late. The Claimant agreed she received the decision around the end of 2018 or early 2019, and she asked the Minister to reconsider on May 9, 2023. This was more than 90 days after the Minister communicated its decision.
- The Minister didn't act judicially when it refused to give the Claimant permission to appeal. The Minister ignored relevant factors it should have considered.

[6] The General Division then considered whether the Claimant could have an extension to ask for reconsideration. The General Division refused to give the Claimant an extension because she wasn't able to show a continuing intention to appeal.¹

¹ See paragraph 35 and following in the General Division decision.

Issues

[7] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact by ignoring some evidence about whether the Claimant showed a continuing intention to request reconsideration?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[8] 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.²

[9] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.³

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

² See section 58.1 (a) and (b) in the *Department of Employment and Social Development Act (Act)*.

³ See section 58.1(c) in the Act.

No arguable case for an error of fact by the General Division

[11] The Claimant argues that the General Division made an error of fact by ignoring her evidence that demonstrated she had an ongoing intention to request reconsideration. The Claimant explains that her efforts to seek out medical diagnoses and her attendance at medical appointments were evidence of her ongoing intention to request reconsideration. These were efforts to eventually show on appeal that her disability was long-continued and of indefinite duration.⁴

[12] The General Division decided that the Claimant didn't demonstrate a continuing intention to request reconsideration. The General Division found that in 2018 and 2019, the Claimant made a conscious decision not to ask for reconsideration. She changed her mind four years later.⁵

[13] The Claimant hasn't raised an arguable case for an error of fact. The General Division considered the evidence the Claimant provided that was relevant to whether she demonstrated an ongoing intention to appeal. The General Division determined that the Claimant thought that she would improve and that she would ask for reconsideration later if her prognosis turned out to be wrong. It's not arguable that the Claimant's efforts to continue pursuing diagnoses and attend medical appointments are relevant to demonstrating a continuing intention **to request reconsideration**. There's no doubt that the Claimant continued to manage her medical conditions, but this isn't arguably the same as showing an intention to request reconsideration.

No new evidence

[14] The Claimant hasn't provided any new evidence that wasn't already presented to the General Division. Accordingly, I cannot grant the Claimant permission to appeal based on new evidence.

⁴ See AD1-3.

⁵ See paragraph 39 in the General Division decision.

[15] I've reviewed the record.⁶ I'm satisfied there's no arguable case that the General Division made an error by ignoring or misunderstanding the evidence.

[16] The Claimant's appeal will not go forward. However, she is always free to make a new application for the CPP disability pension.

Conclusion

[17] I've refused to give the Claimant permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

⁶ For more on this kind of review by the Appeal Division, see *Karadeolian v Canada (Attorney General)*, 2016 FC 615.