



Citation: *CW v Minister of Employment and Social Development*, 2024 SST 397

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: C. W.

Representative: K. W.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated January 9, 2024
(GP-22-1710)

Tribunal member: Kate Sellar

Decision date: April 19, 2024

File number: AD-24-259

Decision

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

Overview

[2] The Claimant was laid off from her job as a housekeeper in October 2019. She was supposed to go back to work around March 2020, but she wasn't recalled because of the pandemic.

[3] The Claimant got COVID-19 in March 2020. She said there was a time after she got sick where she could still work with her limitations. During this period, she said she couldn't get work because of the closures caused by the pandemic. By January or February 2022, her health (because of long COVID) got so bad she could no longer work.

[4] The Claimant applied for a Canada Pension Plan (CPP) disability pension on March 10, 2022. The Minister of Employment and Social Development (Minister) refused her application initially and in a reconsideration letter.

[5] The Claimant appealed to this Tribunal. The General Division decided that the Claimant didn't show that her disability became severe and prolonged on or before December 31, 2019 (the last day of her coverage period). Accordingly, the General Division concluded that the Claimant wasn't eligible for the disability pension.

Issues

[6] The issues in this appeal are:

- a) Is there an arguable case that the General Division 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

[7] 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

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

[9] 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

[10] The Claimant seems to argue that the General Division made an error of fact by ignoring evidence about the reasons why the Claimant didn't have coverage under the CPP when she no longer felt well enough to work.³

[11] The General Division found that the last day of the Claimant's coverage period was December 31, 2019. The coverage period (or minimum qualifying period, MQP) is based on the Claimant's contributions to the CPP. The Claimant has coverage only through what's called the "late applicant" provision, which allows coverage for the last time the Claimant had four years of sufficient contributions within a six-year period. 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) of the Act.

³ See AD1-8.

Claimant had valid contributions in 2014, 2016, 2017 and 2019, but not in 2018 or 2015. This means that the last day of coverage under the plan was December 31, 2019.⁴

[12] The General Division found that both the Claimant's testimony and medical evidence supported that the Claimant started to experience functional limitations (things she couldn't do) in March 2020 when she got COVID-19. She was well enough to work in June 2020 with limitations, but by January or February 2022, she was unable to work because of long COVID.

[13] The Claimant raises two key arguments about possible errors in the General Division decision.

– **No arguable case that the General Division ignored evidence about emergency orders.**

[14] First, the Claimant argues that the General Division should have considered the fact that it was COVID-19 policies and procedures that impacted the Claimant's ability to work starting in March 2020 until early January or February 2022. The Claimant argues that the General Division should have considered the impact of federal orders made under emergency legislation on the Claimant's ability to work. She says those orders impacted her ability to establish coverage under CPP when she actually became sick in 2022.

[15] The General Division is presumed to have considered all the evidence, even if it doesn't discuss all the evidence in its decision. The Claimant can overcome that assumption by showing that the evidence that wasn't discussed was important enough that the General Division should have discussed it.⁵

[16] The Claimant's concerns about ignoring the impact of COVID-19 emergency orders doesn't amount to an arguable case for an error by the General Division. The General Division was clear that it has the power only to consider the earnings (and contributions) that the Claimant made to the CPP, not the reasons why she didn't make

⁴ See GD2-6.

⁵ See *Lee Villeneuve v Canada (Attorney General)*, 2013 FC 498.

them. The Claimant didn't argue that there was an error in the Claimant's earnings and contributions. The Claimant didn't argue that the General Division misapplied the CPP to the Claimant's actual contributions. The Claimant had coverage until December 31, 2019. There's no arguable case that the reasons why she didn't contribute were important enough that the General Division needed to consider them. The Claimant must establish the disability during the coverage period. The General Division explained doesn't have the power to change that coverage period based on the reasons why the Claimant didn't contribute in any given year.⁶

– **The Claimant's Charter arguments cannot form the basis for any error by the General Division.**

[17] Second, at the Appeal Division, the Claimant has raised the Charter of Rights and Freedoms for the first time.⁷ The Claimant argues that the CPP had a discriminatory effect on people with disabilities during the COVID-19 pandemic.

[18] Specifically, the Claimant notes that federal law allowed people without disabilities to access employment income supports during the pandemic even though they wouldn't normally have qualified due to insufficient contributions to employment insurance. By contrast, the federal government penalized people with disabilities who later applied for disability pensions by maintaining the regular contribution requirements in the CPP to establish a coverage period. The legislators didn't change those contribution requirements even when the reason people couldn't meet those requirements was emergency orders impacting their ability to work during the pandemic.

[19] The problem here is that the Claimant didn't raise a Charter argument at the General Division. She only mentioned discrimination or a possible violation of the Charter at the Appeal Division.

[20] I can only give the Claimant permission to appeal based on the criteria I outlined above in paragraph 7. The Claimant didn't raise (and therefore the General Division didn't address) any Charter arguments. There are no Charter arguments in the file that

⁶ See paragraph 15 in the General Division decision.

⁷ See AD1-9.

would lead me to find that the General Division might have failed to provide a fair process or made any error of fact, law, or mixed law and fact. I cannot grant the Claimant permission to appeal so that she can bring a Charter case now.

[21] The Claimant's Charter argument cannot form the basis for giving her permission to appeal because it's not connected to any possible error that the General Division might have made.

No new evidence

[22] The Claimant hasn't provided any new evidence that the General Division didn't already have. As a result, new evidence cannot form the basis for granting permission to appeal.

[23] I've reviewed the record.⁸ I'm satisfied that the General Division hasn't ignored or misunderstood any important evidence. The Claimant couldn't show that her disability became severe and prolonged on or before December 31, 2019. Her evidence and the medical evidence cover the impact of long COVID and mental health diagnoses on her ability to work later in 2020 and particularly in early 2022.

[24] There are no other facts available to me that, if properly understood or considered, could impact the Claimant's coverage period. There are also no other facts in the record that, if properly understood or considered, could result in a finding that the Claimant's disability became severe and prolonged by December 2019.

A Final Note

[25] The CPP allows for some "drop out" provisions. Drop out provisions allow people to remove time from the contributory period when calculating coverage periods. Being able to "drop out" time from the contributory period can result in a coverage period that ends later. There is no "drop out" provision related to any period during which people may not have been able to work in their field due to emergency measures during the

⁸ The Federal Court discusses the need for this kind of review by the Appeal Division in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.

pandemic. If there were such a “drop out” provision, it could result in some people with long COVID (who wouldn’t otherwise have sufficient contributions) qualifying for a CPP disability pension by way of the late applicant provision.

Conclusion

[26] I’ve refused permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division