



Citation: *JR v Minister of Employment and Social Development*, 2024 SST 1526

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: J. R.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated October 29, 2024
(GP-23-2022)

Tribunal member: Kate Sellar

Decision date: **December 11, 2024**

File number: AD-24-773

Decision

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

Overview

[2] The Claimant stopped working in April 2003. At the time, she was living overseas, where she was the marketing and leasing manager for a shopping mall. She had problems with alcohol abuse and other mental health diagnoses. She couldn't do her work properly and she was often absent. As a result, she was let go from her job. She hasn't worked anywhere since then.

[3] The Claimant applied for a Canada Pension Plan (CPP) disability pension in April 2023. The Minister of Employment and Social Development (Minister) refused her application initially and in a reconsideration letter.

[4] The Claimant appealed the Minister's decision to this Tribunal. The General Division dismissed the Claimant's appeal. The General Division decided that the Claimant wasn't able to show that her disability became severe and prolonged by December 31, 2003 and continuously since then.

Issues

[5] The issues in this appeal are:

- a) Is there an arguable case that the General Division made an error of fact?
- 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 arguable case for an error of fact.

[9] The Claimant argues that the General Division got some important facts wrong, including the dates of her illness. She says that she has been sick since 2002.³ She says that the General Division ignored the report from the hospital in August 2021 which shows that her disability has been severe and prolonged since early 2003.⁴ The Claimant points out that her short-term memory loss is such that she cannot drive a car or remember things so it is impossible for her to make a living.

[10] The General Division found that the medical evidence did not support that the Claimant was unable to work by December 2003 and continuously since then.⁵

[11] The General Division noted that the Claimant was hospitalized for three months beginning in August 2021 for acute Wernicke's encephalopathy secondary to alcohol

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 AD1-3.

⁴ See AD1-3.

⁵ See paragraphs 15 and 16 in the General Division decision.

dependence. As a result, she has a chronic memory disorder called Korsakoff syndrome.⁶

[12] However, the General Division concluded that the Claimant needed some objective evidence about her functional limitations during her coverage period.⁷ She had one report from a psychiatrist stating that her condition started approximately five years before she first started treating the Claimant in 2011.⁸ The General Division found that this was not sufficient objective evidence supporting the application for disability benefits for a 2003 coverage period.

[13] Ignoring important evidence or misunderstanding important evidence can be an error of fact.

[14] In this case, the Claimant hasn't raised an arguable case for an error of fact. The General Division didn't ignore the Claimant's report from her hospitalization in 2021. It mentioned her hospitalization and reviewed the available medical evidence in the appeal. The General Division concluded that there wasn't sufficient objective medical evidence to support that her disability impacted her ability to work in 2003.

[15] Although the Claimant says that the hospitalization report proves she has had a severe disability since 2003, I see nothing in the 2021 discharge report about the Claimant's situation in 2003. There is only a general reference to a "history" of alcohol use disorder, depression, and HTN.⁹

[16] There's no arguable case that the General Division ignored or misunderstood the Claimant's medical evidence.

⁶ See paragraph 14 in the General Division decision, and the documents from the hospital when the Claimant was discharged are at GD2-109 and following.

⁷ See *Warren v Canada (Attorney General)*, 2008 FCA 377; and *Dean v Canada (Attorney General)*, 2020 FC 206.

⁸ See paragraph 24 in the General Division decision, quoting from a report at GD2-80 to 84.

⁹ See GD2-111.

The Claimant hasn't set out new evidence.

[17] The Claimant hasn't set out new evidence that wasn't presented at the General Division. The Claimant stated in her application that she would try to gather some additional medical information from her time overseas, but it would be difficult because that doctor retired. She mentioned that a doctor in Canada also had evidence, but she didn't set out what that evidence was or when she might be able to access it.

[18] The Tribunal gave the Claimant additional time to provide any evidence the General Division didn't have. The Tribunal requested that if the Claimant was unable to secure the evidence, she could instead provide an update on her progress towards accessing the information and estimate much more time she needed. The Claimant didn't respond.

[19] In my view, the General Division hasn't set out new evidence that would justify giving her permission to appeal. She was given extra time to provide the evidence itself, more information about what the evidence would say, or more information about her steps to secure the evidence. Without providing any more detail, I cannot conclude that she has set out evidence that would allow me to provide permission to appeal.

Conclusion

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

Kate Sellar
Member, Appeal Division