



Citation: *NJ v Minister of Employment and Social Development*, 2026 SST 138

## **Social Security Tribunal of Canada Appeal Division**

# **Leave to Appeal Decision**

**Applicant:** N. J.  
**Representative:** S. R.

**Respondent:** Minister of Employment and Social Development

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**Decision under appeal:** General Division decision dated April 7, 2025  
(GP-24-348)

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**Tribunal member:** Janet Lew

**Decision date:** February 25, 2026

**File number:** AD-25-408

## Decision

[1] Leave (permission) to appeal is refused. The appeal will not be going ahead.

## Overview

[2] The Applicant, N. J. (Claimant), has applied for leave to appeal the General Division decision.

[3] The General Division found that the Claimant did not have a severe disability under the *Canada Pension Plan* by December 31, 2004, the end of his minimum qualifying period, nor experience the onset of a severe disability within the proration period between January 1, 2005, and April 2005.<sup>1</sup> As a result, the General Division found that the Claimant was not eligible for a Canada Pension Plan disability pension.

[4] The General Division came to this decision as it found that the Claimant did not have any supporting medical evidence to show that his functional limitations affected his ability to regularly pursue any substantially gainful occupation by December 31, 2004, or within the proration period. The General Division noted that there was a prescription for medications in 2013 and that the medical evidence began in 2022, years after the minimum qualifying period had ended.

[5] The Claimant argues that he suffers from severe anxiety, depression, and back and shoulder pain, all of which affect his daily life and cause feelings of hopelessness and unhappiness. His mental health is deteriorating. The Claimant appeals for a disability pension based on compassionate grounds. He worked for many years doing heavy lifting and driving. He has been unable to get medical records from his doctors because of the passage of time.

[6] This matter has been abeyed several times since June 2005, to give the Claimant a chance to try to get medical records dating back to 2004. The Respondent, the Minister of Employment and Social Development (Minister), urges the Appeal

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<sup>1</sup> The minimum qualifying period is the date by which a claimant must prove that they have a severe and prolonged disability. The minimum qualifying period is based on a claimant's contributions to the Canada Pension Plan.

Division to now, “prioritize timely resolution.”<sup>2</sup> In other words, the Minister would like the Appeal Division to move this matter forward, under Rule 8(1) of the *Social Security Tribunal of Procedure*, which requires the appeal process to be as simple and quick as fairness allows. The Minister argues that, despite giving the Claimant multiple extensions to try to get records, he still does not have any objective medical evidence for the relevant timeframe.

[7] Before the Claimant can move ahead with the appeal, I have to decide whether there is an arguable case that the General Division made a natural justice, legal, or factual error, or an error of mixed fact and law, or that the Claimant now has produced new evidence that the General Division did not have. If there is neither an arguable case nor new evidence, this ends the matter.<sup>3</sup>

[8] I am not satisfied that there is an arguable case nor that there is new evidence. Therefore, I am not giving permission to the Claimant to move ahead with the appeal.

## Issues

[9] The issues in this appeal are:

- a) Is there any new evidence?
- b) Is there an arguable case that the General Division either failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, or that it made a legal or factual error, or an error of mixed fact and law?
- c) Does the Appeal Division have any jurisdiction to consider compassionate grounds?

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<sup>2</sup> Minister’s letter dated January 30, 2026, at A014-2.

<sup>3</sup> Section 58.1 of the *Department of Employment and Social Development (DESD) Act*.

## **I am not giving the Claimant permission to appeal**

[10] I can give the Claimant permission to appeal under section 58.1(a) or (b) of the *Department of Employment and Social Development Act* (DESDA) if the application raises an arguable case that the General Division:

- Did not follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- interpreted or applied the law incorrectly; or
- got the facts wrong.<sup>4</sup>

[11] I can also give the Claimant permission to appeal under section 58.1(c) of the DESDA if the Claimant provides evidence that he had not given to the General Division.<sup>5</sup>

[12] Since the Claimant has not raised an arguable case and has not set out new evidence, I must refuse permission to appeal.

## **The Claimant does not have any new evidence**

[13] The Claimant and his representative have been trying to get medical records dating back to 2004.

- They have gone to the Ontario Health Insurance Plan claims history department, but the records do not go back that far.<sup>6</sup>
- They have gone to the Ontario College of Physicians for help in locating records. The College does not know the location of the medical files.<sup>7</sup> The

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<sup>4</sup> *Department of Employment and Social Development Act*, section 58.1(a) and (b)

<sup>5</sup> *Department of Employment and Social Development Act*, section 58.1(c)

<sup>6</sup> Claimant's email of August 20, 2025, at AD3.

<sup>7</sup> Claimant's email of November 28, 2025, at AD10.

College advised that they can contact the Privacy Commissioner and various records and storage facilities.<sup>8</sup>

- They have gone to the Privacy Commissioner's office, which in turn has advised them to write to storage unit companies in Ontario.
- They have written to storage unit companies but have not received any response. The Privacy Commissioner's office has since suggested that they file a complaint against the storage unit companies.<sup>9</sup>
- They have tried to get the psychiatrist's records, but he passed away in either 2013<sup>10</sup> or in 2016.<sup>11</sup>
- They have also tried to get the family doctor's records, but he resigned in 2018<sup>12</sup> (or possibly in 2020<sup>13</sup>) and left the country, without providing any contact information.<sup>14</sup>

[14] The Claimant's representative says that they have run out of options, as the Claimant cannot afford legal fees to go to court for an order for production of these records.<sup>15</sup>

[15] The Appeal Division held a case management conference on January 8, 2026. The Claimant's representative advised the Appeal Division that, to date, neither she nor the Claimant has been able to obtain any supporting medical records relevant to the issue of whether the Claimant had a severe and prolonged disability by the end of his minimum qualifying period.<sup>16</sup>

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<sup>8</sup> Claimant's email of September 29, 2025, at AD7.

<sup>9</sup> Claimant's email of September 29, 2025, at AD7.

<sup>10</sup> Claimant's request for reconsideration, at GD2-14.

<sup>11</sup> Claimant's email of September 29, 2025, at AD7, and email of October 2, 2025, at AD8.

<sup>12</sup> Claimant's email of September 29, 2025, at AD7, and email of October 2, 2025, at AD8.

<sup>13</sup> Claimant's email of November 28, 2025, at AD10.

<sup>14</sup> Claimant's email of August 20, 2025, at AD3.

<sup>15</sup> Claimant's email of November 28, 2025, at AD10.

<sup>16</sup> Appeal Division summary of case management conference, dated January 8, 2026, at AD13.

[16] The Claimant's representative is confident that the records exist, although she and the Claimant are unaware of their location, and do not have any concrete evidence that they still exist.<sup>17</sup>

[17] The Claimant's representative recognizes that there will likely be costs to obtaining any records. She wanted more time to consult a lawyer to discuss the feasibility in pursuing the option of seeking a court Order to compel production of these records or in identifying any further options that they may have. The representative noted that she recently started working in a litigation and corporate law firm, so she does not expect that the costs will be very significant.<sup>18</sup>

[18] In the representative's most recent correspondence dated January 23, 2026, she says that they are committed to obtaining the medical records and have sought legal advice about their options. She says that she has contacted the Privacy Commissioner for a hearing. She argues that the Claimant's records must exist somewhere, as both the family doctor and specialist either passed away or left their practice within the past 10 years.<sup>19</sup>

[19] The Minister acknowledges the Claimant's ongoing efforts to obtain medical records, but argues that neither the Claimant nor his representative has provided specific timelines or concrete steps that would indicate imminent progress in obtaining these records. The Minister writes, "The information remains general and does not address when, or if, the necessary evidence will be available."<sup>20</sup>

[20] The Appeal Division responded to the Claimant on February 2, 2026, writing:

2. What actual steps have you taken on behalf of the [Claimant] to move this matter forward, apart from calling the Information and Privacy Commissioner of Ontario and requesting a hearing? How is this going to advance the [Claimant's] pursuits in obtaining records, as it does not seem

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<sup>17</sup> Appeal Division summary of case management conference, dated January 8, 2026, at AD13.

<sup>18</sup> Appeal Division summary of case management conference, dated January 8, 2026, at AD13.

<sup>19</sup> Claimant's email of January 23, 2026, at AD12.

<sup>20</sup> Minister's letter dated January 30, 2026, at AD14.

that the Commissioner has any jurisdiction over private health care providers such as family doctors?

3. At the case conference, you had suggested that you would be seeking to file an application or petition for a court Order compelling the production of records from five storage companies. Where is there any evidence that the [Claimant] is pursuing this option?

[21] The Claimant has not responded to the Appeal Division's correspondence of February 2, 2026.

[22] It has been close to nine months now since the Claimant filed his application with the Appeal Division for leave to appeal. The Claimant and his representative have spent several months trying to locate his medical records from more than 20 years ago, without making any progress. The Claimant's representative speculates that these records exist—she simply does not know where they might be.

[23] Even if the Claimant's representative were to seek a court Order compelling production of these records, it is far from clear that this avenue will bear any fruit, especially as she does not know where such an Order should be directed. While it is all fine and well to say that the family doctor and specialist should have arranged to place their records in storage, there is no evidence to suggest that that occurred or, if it did, there is no evidence showing where these records might have gone.

[24] I am also unconvinced that any hearing before the Privacy Commissioner will yield results. The Claimant has not shown that the Commissioner has the jurisdiction to order production of any records from private entities. Besides, the Claimant has not shown that he or his representative has taken concrete steps with the Commissioner's office to somehow obtain these records.

[25] I see no justification to delay this matter any further as there is no evidence that these records still exist or that there are any active, ongoing steps taking place that could lead to production of these dated records. As it stands, the Claimant does not

have any new medical records that would allow me to grant his application for leave to appeal.

### **The Claimant does not have an arguable case**

[26] The Claimant simply says that he disagrees with the General Division decision. But he does not suggest that the General Division made any legal or factual errors, or any errors of mixed fact and law. In my own review of the General Division's decision, I do not see that it made any of these types of errors.

[27] The General Division set out what the Claimant was required to show to qualify for a Canada Pension Plan disability pension. It cited the applicable provisions of the *Canada Pension Plan*.

[28] The General Division accepted the Claimant's evidence that by December 2004, he had functional limitations. But it also determined that he had to provide some medical evidence to show that his functional limitations left him incapable regularly of pursuing a substantially gainful occupation. It was not enough to show that he receives the federal Disability Tax Credit. Having to produce medical evidence to prove that a claimant has a severe disability is consistent with the requirements, as set out by the Federal Court of Appeal in *Warren*, to which the General Division also referred.<sup>21</sup>

[29] The Claimant does not challenge any of the General Division's findings nor challenge how it applied the law to the facts. And based on my review of the record, I see that the General Division's findings are consistent with the evidence before it.

[30] For instance, the General Division determined that the Claimant's family doctor began treating him in 2022, and that the family doctor's medical report states that the Claimant's back pain started in 2022, and his depression in 2023. These findings accurately reflect the evidence.<sup>22</sup>

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<sup>21</sup> General Division decision at para 17, citing *Warren v Canada (Attorney General)*, 2008 FCA 377.

<sup>22</sup> CPP Medical Report, at GD2-112 and GD2-113.

[31] I am not satisfied that the Claimant has raised an arguable case under section 58.1(a) or (b) of the DESDA.

**The Appeal Division does not have any jurisdiction to grant a disability pension on compassionate grounds**

[32] The Claimant asks the Appeal Division to award him a disability pension on compassionate grounds, given his medical state and the hardship he faces. The Appeal Division, however, does not have any discretionary power or any jurisdiction to allow an appeal on compassionate grounds, and this does not serve as a ground of appeal.

**Conclusion**

[33] Permission to appeal is refused as the Claimant has not met any of the requirements under section 58.1 of the DESDA. This means that the appeal will not be going ahead.

Janet Lew  
Member, Appeal Division