



[TRANSLATION]

Citation: *MP v Minister of Employment and Social Development*, 2023 SST 409

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

# **Leave to Appeal Decision**

<b>Applicant:</b>	M. P.
<b>Respondent:</b>	Minister of Employment and Social Development
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<b>Decision under appeal:</b>	General Division decision dated January 6, 2023 (GP-22-925)
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<b>Tribunal member:</b>	Pierre Lafontaine
<b>Decision date:</b>	April 5, 2023
<b>File number:</b>	AD-23-194

## Decision

[1] Permission to appeal is refused. The appeal will not proceed.

## Overview

[2] On February 17, 2021, the Applicant applied for a *Canada Pension Plan* (CPP) disability pension for a third time. On November 8, 2021, the Respondent (Minister) denied the Applicant's application initially. Following a request for reconsideration, the Minister maintained its initial decision. The Applicant appealed to the Tribunal's General Division.

[3] The General Division noted an earlier decision of the General Division dated October 28, 2016, which decided that the Applicant did not have a severe and prolonged disability as of December 31, 2009. It found that this decision had not been appealed to the Appeal Division. The General Division found that the Applicant had not made any contributions since then that could establish a minimum qualifying period (MQP) after December 31, 2009. It found that it was appropriate to follow the October 28, 2016, decision and to apply *res judicata*.

[4] The Applicant seeks permission from the Appeal Division to appeal the General Division decision. She argues that the General Division failed to consider the various reports on file that show that she has a severe and prolonged disability.

[5] I have to decide whether there is an arguable case that the General Division made a reviewable error based on which the appeal has a reasonable chance of success.

## Issues

[6] The issues in this appeal are the following:

- (a) Has the Applicant raised an arguable case that would justify granting permission to appeal?

(b) Did the Applicant submit evidence that was not before the General Division?

### **I am not granting the Applicant permission to appeal**

[7] I can grant the Applicant permission to appeal if her application raises an arguable case that the General Division did one of the following:

- did not follow a fair process
- acted beyond its powers or refused to exercise those powers
- interpreted or applied the law incorrectly
- got the facts wrong

[8] I can also give the Applicant permission to appeal if her application sets out evidence that was not presented to the General Division.

[9] Since the Applicant has not raised an arguable case and has not presented evidence that would justify granting permission to appeal, I must refuse permission to appeal to the Appeal Division.

### **The Applicant has not raised an arguable case**

[10] In support of her application for permission to appeal, the Applicant argues that the General Division failed to consider some of the evidence. She says the General Division failed to consider Ms. Marquis' January 2, 2010, report, X's May 18, 2012, report, and the opinion of her family doctor who confirmed that the medical reports are still valid.

[11] I must reiterate that the calculation of the MQP is important because a person has to establish that they had a severe and prolonged disability on or before the end of their MQP.

[12] The General Division noted an earlier General Division decision dated October 28, 2016, which decided that the Applicant did not have a severe and

prolonged disability as of December 31, 2009. The Applicant had not disputed before the General Division that the MQP ended on December 31, 2009. The General Division took into account that the Applicant had not appealed that decision. It considered the General Division's October 28, 2016, decision to be final.

[13] The General Division found that the Applicant had not made any contributions since then that would establish an MQP after December 31, 2009.

[14] The General Division found that the three preconditions for applying *res judicata* had been met. It exercised its discretion and decided that *res judicata* should be applied.

[15] After a thorough review of the October 28, 2016, decision, the General Division found that it was not unfair or unjust for *res judicata* to be applied in this case. The General Division found that the purposes, processes, or stakes involved in the two proceedings did not differ significantly. It also found that the Applicant could have appealed that decision which she never did.

[16] The General Division found that it did not have jurisdiction to consider the disability issue on or before December 31, 2009, the date when the Applicant's MQP ended.

[17] I also note that the reports the Applicant raised in support of her application for permission to appeal were all considered by the General Division in its October 28, 2016, decision.

[18] I see no plausible argument that the General Division failed to provide a fair process, acted beyond or refused to exercise its powers, interpreted or applied the law incorrectly, or got the facts wrong when it found that it did not have jurisdiction to consider the disability issue on or before December 31, 2009, the date when the Applicant's MQP ended.

**The Applicant has not provided any new evidence that I can consider**

[19] The law says that I can allow an applicant to appeal if their application sets out evidence that was not presented to the General Division.

[20] In support of her application for permission to appeal, the Applicant says that she has evidence that the General Division did not consider. She says that since her accident, she has received documents from time to time. She does not indicate a foreseeable date when she will submit the remaining documents.<sup>1</sup>

[21] I cannot grant permission to appeal when the Applicant does not present evidence that was not before the General Division.

[22] I find that the Applicant's application for permission to appeal is more an attempt to appeal the General Division's October 28, 2016, decision to the Appeal Division. Unfortunately for the Applicant, the General Division decision made after the October 13, 2016, hearing is final.

**Conclusion**

[23] Permission to appeal is refused. The appeal will not proceed.

Pierre Lafontaine  
Member, Appeal Division

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<sup>1</sup> See AD-1-19.