

Federal Court



Cour fédérale

**Date: 20180309**

**Docket: T-649-17**

**Citation: 2018 FC 277**

**Ottawa, Ontario, March 9, 2018**

**PRESENT: The Honourable Mr. Justice O'Reilly**

**BETWEEN:**

**CHRISTOPHER CSORDAS**

**Applicant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

**JUDGMENT AND REASONS**

I. Overview

[1] Mr Christopher Csordas worked for many years as a delivery truck driver but had to stop in 2013 due to back, neck, and shoulder pain. He applied for disability benefits under the Canada Pension Plan but was turned down; his request for reconsideration was also denied.

[2] Mr Csordas appealed to the General Division of the Social Security Tribunal (SST). The General Division reviewed the medical evidence and received Mr Csordas's testimony, as well as that of his father. The General Division dismissed the appeal after finding that Mr Csordas had failed to prove that he was suffering from a severe disability.

[3] Mr Csordas attempted to appeal the General Division's decision, but the Appeal Division of the SST concluded that it was being asked simply to reconsider the evidence and submissions that had already been provided to the General Division. Mr Csordas urged the Appeal Division to consider additional evidence that had not been available at the time of the hearing before the General Division. The Appeal Division refused to consider the new evidence and concluded that it had no authority to reweigh the evidence. It denied Mr Csordas leave to appeal.

[4] Mr Csordas submits that the Appeal Division's decision was unreasonable because his appeal had a reasonable chance of success based on the new evidence he had provided. He asks me to quash the Appeal Division's decision and order another panel to reconsider his request for leave. He also asks me to consider more new evidence which was not before either division of the SST.

[5] I can find no basis for overturning the Appeal Division's decision. It had no obligation to review the new evidence or reweigh the evidence before the General Division. I must, therefore, dismiss this application for judicial review.

[6] Mr Csordas has framed a number of different issues but I find that they all relate to the reasonableness of the Appeal Division's decision.

## II. The General Division's Decision

[7] The General Division summarized all of the evidence before it. In particular, it assessed the medical evidence, which was to the following effect:

- Dr R Bobba, Rheumatologist, found that Mr Csordas experienced pain in his shoulders, legs and chest, as well as numbness in his hands. He also concluded that Mr Csordas appeared well and comfortable and had a range of motion in his joints that was unremarkable.
- Dr Todd Bentley found that Mr Csordas was “neurologically intact.” He detected some evidence of arthritis and spinal degeneration.
- Dr Susann Goodwin, Neurologist, concluded that all testing yielded normal results and no decline in the previous two years. However, she concluded that Mr Csordas's activities are limited by pain, and that he would not be able to work at any job.
- The DeGroot Pain Clinic opined that Mr Csordas experienced social anxiety, depression, and pain, and that he would benefit from joining their program.
- Dr Maria Ross, of Ross Rehabilitation and Vocational Services, found that Mr Csordas was completely disabled from “competitive employment” and recommended psychological and exercise therapy.

- Dr Ali Ghouse, Psychiatrist, found that Mr Csordas has widespread chronic pain syndrome, which was likely permanent. He concluded that Mr Csordas's condition was severe and prolonged.
- Dr Helen Macaulay, Psychologist, found that Mr Csordas experienced significant emotional distress and impaired functioning. She concluded that returning to work was not feasible for Mr Csordas.

[8] The General Division concluded from the evidence that Mr Csordas did not suffer from a severe physical or psychological condition preventing him from seeking employment. In particular, it noted that Mr Csordas had not yet had the benefit of following a program at the pain clinic; he was receiving only mild pain treatment (anti-inflammatories and Tylenol); and he had not been treated for any mental health issues. The General Division accepted the expertise of Drs Ghouse, Macaulay and Ross, but preferred the evidence emanating from the physicians treating Mr Csordas, who had not diagnosed him with any severe medical condition.

[9] Given that it had not found any severe disability, the General Division declined to go on to consider the other required criterion, namely, whether the disability was also prolonged.

### III. The Appeal Division's Decision

[10] The Appeal Division noted that there are only three grounds of appeal available under the *Department of Employment and Social Development Act*, s 58(1): (1) breach of natural justice or jurisdictional error; (2) error of law; and (3) perverse, capricious, or unfounded error of fact. The Appeal Division also described its role on an application for leave to appeal as being limited to

deciding whether the applicant's appeal has a reasonable chance of success (s 58(2)); see Annex for provisions cited).

[11] The Appeal Division reviewed the grounds Mr Csordas had put forward in support of his application for leave. First, Mr Csordas submitted that a psychotherapy report, prepared after the General Division had rendered its decision, confirmed that he was suffering from a severe and prolonged disability. Second, Mr Csordas contended that the General Division had failed to weigh the whole of the medical evidence before it.

[12] With respect to the new evidence Mr Csordas wished to file, the Appeal Division concluded that there were limited circumstances in which new evidence could be considered. Normally, this would be done by way of an application to the General Division to rescind or amend its decision, and even then, the burden of proof on the applicant would be great. The Appeal Division did not make any definitive ruling on this question, but it clearly doubted whether Mr Csordas could meet the applicable deadlines and requirements.

[13] With respect to the submission that the General Division had failed to consider the whole of the medical evidence before it, the Appeal Division regarded this argument as an invitation to reweigh evidence that had already been considered and ruled on. The evidence Mr Csordas was concerned about was specifically cited by the General Division and obviously taken into account. In the Appeal Division's view, Mr Csordas's submissions amounted to a disagreement with the General Division's interpretation of, and reliance on, certain medical reports. The Appeal

Division found that Mr Csordas's position did not fall within the available grounds of appeal under the Act and, therefore, did not stand a reasonable chance of success.

IV. Was the Appeal Division's decision unreasonable?

[14] Mr Csordas maintains that the Appeal Division's decision was unreasonable because it failed to take account of the totality of the evidence. He has filed additional evidence before me in order to provide what he describes as background information regarding his disabilities and employment potential.

[15] I cannot agree with Mr Csordas's position.

[16] There are limited circumstances when fresh evidence can be filed on a judicial review (*Bernard v Canada Revenue Agency*, 2015 FCA 263 at para 13-17 and 19-26). Where, as here, the applicant seeks simply to supplement the evidentiary record that was before the decision maker, the fresh evidence is not admissible.

[17] I cannot accept Mr Csordas's submission that the General Division failed to consider the totality of the evidence before it and that the Appeal Division unreasonably failed to grant leave on that basis. Mr Csordas has not satisfied me that the Appeal Division's conclusion that he had not identified a valid basis for his appeal was unreasonable. He did not allege any error of law, breach of natural justice, or any serious error of fact that might have justified granting him leave to appeal.

[18] Therefore, I cannot conclude that the Appeal Division's decision was unreasonable.

V. Conclusion and Disposition

[19] The Appeal Division's denial of leave to appeal to Mr Csordas was not unreasonable in the circumstances. I must, therefore, dismiss this application for judicial review. There is no order as to costs.

**JUDGMENT IN T-649-17**

**THIS COURT'S JUDGMENT is that** the application for judicial review is dismissed.

There is no order as to costs.

"James W. O'Reilly"

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Judge



Annex

*Department of Employment and Social Development Act, SC 2005, c 34*

*Loi sur le ministère de l'Emploi et du Développement social, LC 2005, ch 34*

**58** (1) The only grounds of appeal are that

**58** (1) Les seuls moyens d'appel sont les suivants :

(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

a) la division générale n'a pas observé un principe de justice naturelle ou a autrement excédé ou refusé d'exercer sa compétence;

(b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

b) elle a rendu une décision entachée d'une erreur de droit, que l'erreur ressorte ou non à la lecture du dossier;

(c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

c) elle a fondé sa décision sur une conclusion de fait erronée, tirée de façon abusive ou arbitraire ou sans tenir compte des éléments portés à sa connaissance.

**Criteria**

**Critère**

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

(2) La division d'appel rejette la demande de permission d'en appeler si elle est convaincue que l'appel n'a aucune chance raisonnable de succès.

**FEDERAL COURT**  
**SOLICITORS OF RECORD**

**DOCKET:** T-649-17

**STYLE OF CAUSE:** CHRISTOPHER CSORDAS v ATTORNEY GENERAL  
OF CANADA

**PLACE OF HEARING:** TORONTO, ONTARIO

**DATE OF HEARING:** DECEMBER 11, 2017

**JUDGMENT AND REASONS:** O'REILLY J.

**DATED:** MARCH 9, 2018

**APPEARANCES:**

Anthony Wellenreiter

FOR THE APPLICANT

Penny Brady

FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Wellenreiter & Wellenreiter  
Barristers and Solicitors  
Hamilton, Ontario

FOR THE APPLICANT

Deputy Attorney General of  
Canada  
Toronto, Ontario

FOR THE RESPONDENT