

**Federal Court of Appeal**



**Cour d'appel fédérale**

**Date: 20230531**

**Docket: A-53-21**

**Citation: 2023 FCA 121**

**CORAM: DE MONTIGNY J.A.  
LASKIN J.A.  
MACTAVISH J.A.**

**BETWEEN:**

**HARJINDER BHAMRA**

**Appellant**

**and**

**ATTORNEY GENERAL OF CANADA**

**Respondent**

Heard by online video conference hosted by the Registry on May 30, 2023.

Judgment delivered at Ottawa, Ontario, on May 31, 2023.

**REASONS FOR JUDGMENT BY:**

**MACTAVISH J.A.**

**CONCURRED IN BY:**

**DE MONTIGNY J.A.  
LASKIN J.A.**

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**REASONS FOR JUDGMENT**

**MACTAVISH J.A.**

[1] The Minister of Employment and Social Development refused Harjinder Bhamra's application for a disability pension under the *Canada Pension Plan*, R.S.C., 1985, c. C-8 (CPP) because she failed to establish that she had a severe and prolonged disability prior to the end of her minimum qualifying period. The General Division of the Social Security Tribunal upheld this decision, and the Tribunal's Appeal Division dismissed Ms. Bhamra's application for leave to appeal the General Division's decision. The Appeal Division's decision was subsequently upheld

by the Federal Court, and Ms. Bhamra now appeals to this Court from the Federal Court's decision denying her leave to appeal.

[2] Our role in an appeal such as this is to determine whether the Federal Court identified the correct standard of review – correctness or reasonableness – and whether it properly applied that standard: *Northern Regional Health Authority v. Horrocks*, 2021 SCC 42 at para. 12; *Agraira v. Canada (Public Safety and Emergency Preparedness)*, 2013 SCC 36 at paras. 45-47. This has been described as requiring us to “step into the shoes” of the Federal Court judge, focusing on the administrative decision below – here, the decision of the Appeal Division.

[3] The Federal Court properly identified reasonableness as the standard of review to be applied to the Appeal Division's decision: *Cameron v. Canada (Attorney General)*, 2018 FCA 100 at para. 3. Moreover, as will be explained below, I am satisfied that the Federal Court properly applied that standard in concluding that the Appeal Division's decision was reasonable.

[4] Entitlement to a disability pension is governed by the provisions of the CPP, paragraph 42(2)(a) of which states that a person shall only be considered to be disabled if he or she is determined to have a severe and prolonged mental or physical disability. A disability will be considered to be *severe* only if the person is incapable of regularly pursuing any substantially gainful occupation, and a disability is *prolonged* only if it is determined that the disability is likely to be long, continued and of indefinite duration, or is likely to result in death.

[5] There was no dispute before either Division of the Social Security Tribunal or before the Federal Court that Ms. Bhamra's minimum qualifying period expired on December 31, 2013. She argued before us, however, that the expiry of her minimum qualifying period should have been set at some unidentified date after December 31, 2013, so that she could receive benefits for the disability caused by her cancer and the effects of her treatment.

[6] Unfortunately for Ms. Bhamra, it was not open to any of the decision makers involved in this case (including this Court) to change the end date of her minimum qualifying period. This date is established by operation of a formula set out in the governing legislation, and is based on the earnings and contributions of the individual claimant. The application of this formula in Ms. Bhamra's case results in her having a minimum qualifying period that ended on December 31, 2013.

[7] The case of *J.J. v. Minister of Employment and Social Development*, 2018 SST 1041, also does not assist Ms. Bhamra. Paragraph 3 of that decision simply notes that the application of the legislative formula to J.J.'s personal circumstances resulted in a minimum qualifying period that would expire some time after he became disabled.

[8] It is not disputed that Ms. Bhamra stopped working in late November of 2013, prior to the expiry of her minimum qualifying period, because she slipped and fell, fracturing her ankle. Ms. Bhamra was off of work for a period of time, but the medical evidence before the General Division was that her injury was treated and resolved, and that she could have returned to work once her ankle injury had healed.

[9] In light of this, the General Division quite reasonably found that Ms. Bhamra's ankle injury was not "severe" and that she was thus not disabled prior to December 31, 2013.

[10] Before Ms. Bhamra could return to work, however, she became ill. In March of 2014 – that is, after the expiry of her minimum qualifying period – she began experiencing symptoms, including significant abdominal pain. This led to her being diagnosed with ovarian cancer some months later, and she underwent various forms of treatment, including surgery and chemotherapy.

[11] When she applied for disability benefits in June of 2014, Ms. Bhamra attributed her inability to work to her ovarian cancer. She did not identify her ankle injury as being a disabling condition. Ms. Bhamra subsequently advised the General Division that she suffered from a range of conditions as a result of her cancer and its treatment, including depression, numbness and pain in her hands and feet, arthritis and headaches. She confirmed that her depression, and the numbness and pain in her hands and feet, only began after she had chemotherapy – after the expiry of her minimum qualifying period.

[12] Ms. Bhamra contended, however, that she had suffered from symptoms of her ovarian cancer prior to December 31, 2013. She stated that she thought that she had had a fever in July of 2013, suggesting that this might have been a symptom of her cancer. There was, however, no medical evidence to support this claim. Moreover, as Ms. Bhamra had continued to work through and after her fever, the General Division was not persuaded that the fever or the condition that caused it satisfied the definition of a "disability" under the CPP.

[13] The General Division further noted that Ms. Bhamra had provided little in the way of medical evidence with respect to her cancer, and that what evidence there was was insufficient to support a finding that it had caused her to become disabled before December 31, 2013.

[14] As Ms. Bhamra had failed to establish that it was more likely than not that she was disabled within the meaning of the CPP prior to the end of her minimum qualifying period, the General Division dismissed her appeal. Ms. Bhamra then sought leave to appeal the General Division's decision to the Appeal Division.

[15] It is the responsibility of the General Division to assess the facts, and then, taking the relevant legal principles into account, to determine on the basis of its findings whether the test for disability has been met in a given case: *Hillier v. Canada (Attorney General)*, 2020 FCA 11 at para. 2. The powers of the Appeal Division are more restricted, however, and it may only grant leave in certain, limited situations. Amongst other things, leave will not be granted unless the appellant can demonstrate that the appeal has a reasonable chance of success: subsection 58(2) of the *Department of Employment and Social Development Act*, S.C. 2005, c. 34.

[16] The Appeal Division considered the arguments advanced by Ms. Bhamra, concluding that her appeal should be dismissed. In coming to this conclusion, the Appeal Division noted that the General Division had correctly held that having based her claim for benefits on her cancer and the results of her treatment, Ms. Bhamra had to establish that these conditions caused her to have become disabled prior to December 31, 2013. After examining the evidence before it, the General Division had found that the evidence did not demonstrate that Ms. Bhamra was disabled

as of that date, and the Appeal Division found that the General Division had not erred in coming to that conclusion.

[17] In determining whether the Appeal Division’s decision was reasonable, the Federal Court had to look at the decision-making process followed by the Appeal Division and its outcome. In this case, the Appeal Division provided internally coherent reasoning for its decision to deny leave to appeal to Ms. Bhamra, and its determination that she had not established an arguable case was justified, transparent and intelligible. It was, moreover, justified in relation to the relevant factual and legal constraints that bore on the decision: *Canada (Minister of Citizenship and Immigration) v. Vavilov*, 2019 SCC 65 at paras. 12, 86 and 99. The Federal Court thus did not err in its application of the reasonableness standard to the Appeal Division’s decision.

[18] I recognize that this decision will undoubtedly have harsh consequences for Ms. Bhamra, and I sympathize with her situation. However, in the absence of a reviewable error on the part of the Federal Court, there is no basis to grant her relief. Consequently, I would dismiss the appeal.

“Anne L. Mactavish”

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J.A.

“I agree.  
Yves de Montigny J.A.”

“I agree.  
J.B. Laskin J.A.”

**FEDERAL COURT OF APPEAL**

**NAMES OF COUNSEL AND SOLICITORS OF RECORD**

**DOCKET:** A-53-21

**STYLE OF CAUSE:** HARJINDER BHAMRA v.  
ATTORNEY GENERAL OF  
CANADA

**PLACE OF HEARING:** BY ONLINE VIDEO  
CONFERENCE

**DATE OF HEARING:** MAY 30, 2023

**REASONS FOR JUDGMENT BY:** MACTAVISH J.A.

**CONCURRED IN BY:** DE MONTIGNY J.A.  
LASKIN J.A.

**DATED:** MAY 31, 2023

**APPEARANCES:**

Harjinder Bhamra ON THEIR OWN BEHALF

Ms. Sandra Doucette FOR THE RESPONDENT

**SOLICITORS OF RECORD:**

Shalene Curtis-Micallef FOR THE RESPONDENT  
Deputy Attorney General of Canada