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## CASE SUMMARY: UNSUCCESSFUL APPLICATION FOR JUDICIAL REVIEW OF DECISION MADE BY SOCIAL SECURITY TRIBUNAL DENYING APPLICANT'S CLAIM FOR DISABILITY BENEFITS

The Applicant, Ms. Garshowitz, was unsuccessful in her application for judicial review of a decision made by the Respondent's Social Security Tribunal. The Tribunal had denied the Applicant's claim for disability benefits.

**Administrative law – Decisions reviewed – Pension Appeals Board – Hearing de novo – Judicial review – Appeals – Procedural requirements and fairness – Remedies – Mandamus – Employment – Benefits**

*Gershowitz v. Canada (Attorney General)*, [2017] F.C.J. No. 1268, 2017 FCA 251, Federal Court of Appeal, December 28, 2017, E.R. Dawson, D.W. Stratas and D.J. Rennie JJ.A.

The Applicant, Ms. Garshowitz, applied for disability benefits under the Canada Pension Plan. The Respondent, The Attorney General of Canada's Social Security Tribunal, denied her application on the basis that she did not have severe and prolonged disability at her minimum qualifying period. The Applicant appealed to the General Division and her appeal was dismissed. The Applicant then received leave to appeal to the Appeal Division of the Respondent. The Appeal Division found there was procedural unfairness because the General Division did not allow the Applicant to call witnesses and because the Respondent had redacted medical information. The Appeal Division referred the matter back to the General Division for a new hearing before a different member.

The Applicant applied to the Federal Court of Appeal seeking an order to set aside the Appeal Division's decision. She claimed the Appeal Division should have granted her the disability benefits instead.

The Court rejected the Applicant's argument for two reasons.

First, the Appeal Division's decision was made on a discretionary assessment of the evidence before it. The Appeal Division reasonably concluded that a new hearing before the General Division was necessary to allow the Applicant to have the opportunity to call her evidence.

Second, the Court did not have the legal authority to grant benefits to the Applicant. Pursuant to the Canada Pension Plan, only the Social Security Tribunal is permitted to receive and assess evidence and decide whether an applicant is disabled. The Court held this was not a situation where the outcome on the merits was certain enough to grant mandamus.

The Applicant also sought other relief from the Court, but the Court held the other claims were outside the jurisdiction of the Court.

The Court dismissed the application without costs to either party.

After dismissing the application, the Court then provided some additional comments about another development that would be relevant when the General Division reconsidered its decision. The Court explained that the Applicant had applied to the Court earlier, and the Respondent had conceded that the Applicant was disabled and entitled to the benefits she was seeking. Later, the Respondent opposed the Applicant's claim for mandamus because it was concerned about setting a precedent for this type of relief. Subsequently, the Respondent approved the Applicant's claim for benefits but the Applicant continued to dispute the amount of benefits. This therefore narrowed the issues to be addressed by the General Division at the new hearing.

This case was digested by [Scott J. Marcinkow](#), and first published in the LexisNexis® Harper Grey Administrative Law Netletter and the Harper Grey Administrative Law Newsletter. If you would like to discuss this case further, please contact Scott Marcinkow at [smarcinkow@harpergrey.com](mailto:smarcinkow@harpergrey.com).