

Citation: *N. T. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 79

Appeal No. AD-13-206

BETWEEN:

N. T.

Applicant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: April 28, 2014

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

BACKGROUND & HISTORY OF PROCEEDINGS

[2] The Applicant seeks leave to appeal the decision of the Review Tribunal of February 6, 2013. The Review Tribunal determined that a *Canada Pension Plan* disability pension was not payable to the Applicant, as it found that his disability was not “severe” at the time of his minimum qualifying period of December 31, 2010 (the “MQP”). The Applicant filed an application requesting leave to appeal (the “Application”) with the Pension Appeals Board on April 30, 2013 and it was received by the Appeal Division of the Social Security Tribunal (the “Tribunal”) on May 3, 2013.

ISSUE

[3] Does the appeal have a reasonable chance of success?

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development (DESD) Act*, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal”.

[5] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

APPLICANT’S SUBMISSIONS

[6] The Applicant cited a number of grounds of appeal and allegations of fact, as follows:

1. He has poor eyesight which affects his ability to not only work but also maintain stable employment. He explains that he has “confused vision” which leads to

multiple errors and mistakes and which he has been unsuccessful from hiding from his employers. Indeed, he has been terminated from past employment, on the basis that he was deemed unsuitable.

2. His physical condition impairs the quality, accuracy and speed at which he can perform his work, rendering him uncompetitive.
3. He is in dire financial circumstances and has growing debt to support his children.

[7] The Applicant provided a copy of a Record of Employment which shows that he worked from July 30, 2012 to February 27, 2013 and had total insurable earnings of approximately \$12,500. In February 2013, the Applicant also commenced a Worksafe BC claim arising out of a workplace injury that occurred on January 22, 2013. It is unclear whether his dismissal from this employment relates to his work injury.

[8] The Applicant also worked from March 11, 2013 to April 30, 2013. He provided a copy of a notice of termination dated April 16, 2013. He was dismissed from this last employment as he was deemed unsuitable.

[9] The Applicant submitted additional materials to the Tribunal on or about March 20, 2014, which show his job search efforts, his credit card debt and notification of debt collection from Revenue Services of British Columbia. The Applicant submits that realistically, there is no opportunity for him to ever work again at his age and with his medical disability.

RESPONDENT'S SUBMISSIONS

[10] The Respondent has not filed any written submissions.

ANALYSIS

[11] Although a leave to appeal application is a first, and lower, hurdle to meet than the one that must be met on the hearing of the appeal on the merits, some arguable ground upon

which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[12] Subsection 58(1) of the DESD Act sets out the grounds of appeal as being limited to the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (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.

[13] For our purposes, the decision of the Review Tribunal is considered to be a decision of the General Division.

[14] I am required to satisfy myself that the Applicant's reasons for appeal fall within any of the grounds of appeal and whether any of them have a reasonable chance of success, before leave can be granted.

[15] The Applicant has not identified any failure by the Review Tribunal to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction. He has not identified any errors in law which the Review Tribunal may have committed in making its decision. The Applicant has not identified any erroneous findings of fact which the Review Tribunal may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[16] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some bases for his submissions which fall into the enumerated grounds of appeal, without having the Appeal

Division speculate as to what they might be. The Application is deficient in this regard and I am satisfied that the appeal does not have a reasonable chance of success.

[17] If the Applicant is requesting that we consider any additional records or factors, or re-assess the claim and re-weigh the evidence in his favour, I am unable to do this, given the very narrow constraints of subsection 58(1) of the DESD Act. The leave application is not an opportunity to re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*. The *Canada Pension Plan* does not permit this Tribunal to consider the impact its decisions may have on any of the parties, nor does it confer any discretion upon this Tribunal to consider other factors outside of the *Canada Pension Plan* – such as his personal financial circumstances -- in deciding whether an applicant is disabled as defined by that Act.

CONCLUSION

[18] The Application is refused.

Janet Lew

Member, Appeal Division