Citation: *R. B. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 86

Appeal No. AD-13-179

BETWEEN:

R. B.

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: May 1, 2014

DECISION

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

BACKGROUND & HISTORY OF PROCEEDINGS

[2] On March 18, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant, as it found that her disability was not "severe" at the time of her minimum qualifying period ("MQP") of December 31, 2004. The Review Tribunal also found that the Appellant would have prorated earnings extending the MQP to September 30, 2006, if she were found to have a severe and prolonged disability between January 1, 2006 and September 30, 2006.

[3] The representative for the Applicant filed an Application for Leave to Appeal and Notice to Appeal (the "Application") with the Pension Appeals Board on April 26, 2013 and it was receiving by the Appeal Division of the Social Security Tribunal (the "Tribunal") on April 30, 2013, within the time permitted under the *Department of Employment and Social Development* (DESD) *Act.*

ISSUE

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

THE LAW

[5] According to subsections 56(1) and 58(3) of the 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".

[6] 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

[7] The Applicant disagrees with the findings of the Review Tribunal that her disability was not severe and prolonged at the time of MQP. She cites the following grounds of appeal:

a) She has severe depression which affects her memory and concentration and also makes her more irritable. Her severe depression affects her functionality and impairs her relationships with others. Her family physician recently referred her to a psychiatrist.

b) She has a limited command of the English language and lacks transferrable work skills, which prevent her from engaging in any vocational retraining.

c) She has not returned to any form of employment.

d) Her family physician has provided supportive medical opinions.

[8] The Applicant also advised that she would be submitting further reports to support her appeal.

RESPONDENT'S SUBMISSIONS

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

ANALYSIS

[10] 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).

[11] 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.

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

[13] I am required to determine whether any of 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. The Applicant has not specified how the reasons she has cited fall into any of the grounds of appeal, nor has she used any of the language employed by the Act in setting out the grounds for appeal, but I would not find that to be fatal to any application.

[14] The Applicant however has not suggested that the Review Tribunal failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. She has not cited any errors of law which the Review Tribunal might have made, nor does she allege that the Review Tribunal based its decision on an erroneous finding of fact, made in a perverse or capricious manner or without regard for the material before it. The Applicant simply disagrees with the decision of the Review Tribunal.

[15] The Review Tribunal was permitted to consider the evidence before it and attach the weight it determined appropriate. It was also open to the Review Tribunal to assess the quality of the evidence and determine what facts, if any, to accept or disregard. If the Applicant is requesting that we re-assess the medical evidence and decide in her favour, I am unable to do this, as subsection 58(1) of the DESD Act requires that I determine whether any of the reasons she has cited fall within any of the enumerated grounds of appeal and whether any of them have a reasonable chance of success. The Applicant's reasons disclose no grounds of appeal for me to consider.

New Facts

[16] The Applicant proposes to file additional medical opinions in support of her leave application and appeal. However, the Review Tribunal had already considered a number of medical records, including a medical report dated September 15, 2010 from her family physician, his clinical records documenting visits covering the period from September 6, 2006 to December 2007, and various diagnostic reports. The Review Tribunal also considered medical reports from an orthoapaedic surgeon and psychiatrist.

[17] The Applicant has not stated why she intends to file any additional medical opinions, other than to add to the weight of the evidence before the Review Tribunal. She has not indicated how the proposed additional medical opinions might fall into one of the enumerated grounds of appeal. If the Applicant is requesting that we consider any additional records and re-assess the claim and re-weigh the evidence in her favour, I am unable to do this, given the narrow provisions of subsection 58(1) of the DESD Act.

[18] If the Applicant intends to file additional medical reports in an effort to rescind or amend the decision of the Review Tribunal, she must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and she must also file an application for rescission or amendment with the same Division that made the decision (or in this case, the General Division of the Social Security Tribunal). There are additional requirements that an Applicant must meet to succeed in an application for rescinding or amending a decision. Section 66 of the DESD Act also requires an applicant to demonstrate that the new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. The Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so. This is not a re-hearing of the merits of the claim. In short, there are no grounds upon which I can consider any additional medical opinions, notwithstanding how supportive the Applicant contends they might be.

CONCLUSION

[19] For the reasons stated above, the Application is refused.

Janet Lew
Member, Appeal Division