Citation: *K. O. v. Minister of Human Resources and Skills Development*, 2013 SSTAD 1

Appeal No. CP 29054

BETWEEN:

K. O.

Applicant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Valerie HAZLETT PARKER

DATE OF DECISION: May 14, 2013

DECISION: LEAVE REFUSED

DECISION

[1] The application for leave to appeal is refused.

INTRODUCTION

[2] On August 30, 2012 a Review Tribunal determined that a Canada Pension Plan disability pension not payable. The Applicant filed an application for leave to appeal (the "Application") with the Pension Appeals Board (the "PAB") on November 27, 2012.

[3] In accordance with section 260 of the *Jobs, Growth and Long-term Prosperity Act* of 2012, an Application filed with the PAB before April 1, 2013 "is deemed to be an application for leave to appeal filed with the Appeal Division of the Social Security Tribunal (the "Tribunal") on April 1, 2013, if no decision has been rendered with respect to leave to appeal". As of April 1, 2013, the PAB had not rendered a decision with respect to this Application, therefore the Appeal Division must now decide on the Application.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Human Resources and Skills Development (DHRSD) 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 DHRSD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[6] To ensure fairness, the Application will be examined based on the Applicant's legitimate expectations at the time of its filing with the PAB. For this reason, the determination of whether the appeal has a reasonable chance of success will be made on the

basis of an appeal *de novo* in accordance with subsection 84(1) of the *Canada Pension Plan* (CPP) as it read immediately before April 1, 2013.

ISSUE

[7] The Member must decide if the appeal has a reasonable chance of success.

ANALYSIS

[8] In assessing the Application the Tribunal is guided by decisions of the Federal Court. This Court has decided that to be granted leave to appeal, the Applicant must demonstrate that one ground of appeal has a reasonable chance of success. This can be done by adducing new evidence, or identifying an error of law or an error of significant fact made by the Review Tribunal – *Canada (Attorney General) v. Zakaria*, 2011 FC 136. If new evidence is put forward, it must be such that it raises a genuine doubt as to whether the Review Tribunal would have reached the decision it did – *Kerth v. Canada (Minister of Human Resources Development)*, [1999] F.C.J. No. 1252.

[9] The Applicant puts forward a number of arguments as grounds of appeal. First, he argues that the Review Tribunal took a "cavalier" approach to assessing the case. He disagrees with the weight the Review Tribunal gave to the medical evidence, especially his psychiatric conditions. With this argument, the Applicant essentially asks this tribunal to reevaluate and reweigh the evidence that was put before the Review Tribunal. Assigning weight to evidence, whether oral or written, is the province of the trier of fact, the Review Tribunal in this case. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the Review Tribunal who made the findings of fact – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, I find that this argument does not raise a ground of appeal that has a reasonable chance of success.

[10] The Applicant also disagrees with the Review Tribunal's finding that his sleep apnea condition is not severe. However, the Applicant has not put forward any new evidence regarding this condition. Again, it is not for this tribunal to substitute its view of

the evidence for that of the Review Tribunal. Therefore, I find that this ground of appeal does not have a reasonable chance of success.

[11] In addition, the Applicant has put forward three new documents as new evidence. They are a letter from a family physician, dated April 4, 2013, a note from his Psychiatrist dated March 26, 2013, and a report from the Bravo Hearing Centre dated March 26, 2013. The Federal Court of Appeal concluded that reports that address medical issues at a significantly later date are of limited persuasive value – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. These new reports do not address the Applicant's condition at his minimum qualifying period (December 31, 2009), but his condition at the time the reports were written, which is at a significantly later date. I find that they would not raise a genuine doubt as to whether the Review Tribunal would have made the decision it did had this information been before it. Therefore, it is also not a ground of appeal that has a reasonable chance of success.

[12] The Applicant also corrects one fact in the Review Tribunal decision. He states that he had a steel plate put in his arm after a work accident, not a car accident. This error is not significant, and does not cause any doubt about the conclusion reached by the Review Tribunal. I find that it does not give rise to a ground of appeal that has a reasonable chance of success.

[13] Finally, the Applicant also poses a number of questions for the Review Tribunal in the Application. This does not provide any new evidence, nor does it point to an error made by the Review Tribunal. Therefore, it is not a ground of appeal that has a reasonable chance of success.

CONCLUSION

[14] The Application is refused.

Valerie Hazlett Parker
Member, Appeal Division