Citation: *M. C. M. v. Minister of Human Resources and Skills Development*, 2013 SSTAD 2

Appeal No. CP 29224

BETWEEN:

M. C. M.

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 30, 2013

DECISION: LEAVE GRANTED

DECISION

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

INTRODUCTION

[2] On November 2, 2012 a Review Tribunal determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (the "Application") with the Pension Appeals Board (the "PAB") on February 7, 2013.

[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, she argues that the fact that she participated in volunteer and paid work after her Minimum Qualifying Period should not be "held against her" when examining her application for CPP disability benefits. With this argument, the Applicant essentially asks this tribunal to reevaluate and reweigh the evidence that was put before the Review Tribunal. This is the province of the trier of fact. 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 argues that she did not consult with a pain specialist historically as the cause of her pain remained undiagnosed, that her depression continues to return after treatment and is often severe, and that two specialists have told her that she can not work. This evidence was also before the Review Tribunal. Again, it is not for this tribunal to reweigh the evidence that was before the Review Tribunal to reach a different conclusion. These arguments therefore do not disclose any ground of appeal that has a reasonable chance of success.

[11] In spite of this, the Applicant has presented new evidence, being a letter from Neil Christians dated April 29, 2013 with enclosures. In this letter, Mr. Christians states that while the Applicant first presented for treatment with Generalized Anxiety, Post Traumatic Stress and Fibromyalgia, after treatment and providing a complete history, she has now been diagnosed with Bipolar II. The Applicant has had this condition, undiagnosed, for thirty five years. This new information raises a genuine doubt as to whether the Review Tribunal would have reached the decision it did had this information been before it. Therefore, it is a ground of appeal that has a reasonable chance of success. The Applicant therefore meets the legal requirement to be granted leave to appeal.

CONCLUSION

[12] The Application is granted.

[13] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division