

Citation: *K. U. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 38

Appeal No. AD-13-169

BETWEEN:

K. U.

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: March 25, 2014

DECISION: LEAVE REFUSED

DECISION

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

INTRODUCTION

[2] On February 12, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant. On or about April 2, 2013, the Applicant filed an application requesting leave to appeal (the “Application”) with the Appeal Division of the Social Security Tribunal (the “Tribunal”), within the time permitted under the *Department of Employment and Social Development* (DESD) Act.

ISSUE

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

THE LAW

[4] 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”.

[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] In the Application for Leave to Appeal and Notice of Appeal, the Applicant submits the decision made by the Review Tribunal is unfair and inhumane. She writes that:

“The total hearing loss is permanent and not curable. There is no hope to get a job to obtain a financial to support a family. I have to carry this pain and suffering of for the rest of my life. When I was able to work, I had participated and contributed to CPP every of my paycheque. As an active participant, and active member of CPP, people buy life insurance or home insurance, they will be compensated when they are in accident or the house is damaged or fired. As a member of any association

club I have a privilege to receive a benefit. In case with CPP, I have to pay but get nothing in return when I'm in crisis. Why do I have to pay something that I did not get anything or to benefit from? What pain and suffering more do I have to carry through in order to receive this disability pension? ... The CPP disability fund is just a partial payment not to enjoy the luxury but rather to offset the cost of my pain and suffering that I have to carry through the rest of my life. Sadly, people have to suffer or to face death in order to receive this fund.”

[7] The Applicant compared the impact of the decision of the Review Tribunal to the torture and suffering she and her family had endured under the Khmer Rouge.

[8] The Applicant also provided additional records in support of her appeal and leave application. They include the following:

- i) note prepared by Dr. Ian Huang, in which he wrote that she has “severe allergic rhinitis and profound hearing loss which is permanent”. The date of this note is illegible but appears to be sometime in 2013.
- ii) letter dated November 12, 2013 from her family physician Dr. D.S. Brar. He confirmed that she has total hearing loss in the right ear and severe hearing loss in the left ear, not correctable with hearing aids. He wrote that her disability is severe and permanent.

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 in order 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 states that the only grounds of appeal are 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] In this case, the decision of the Review Tribunal is considered to be the decision of the General Division.

[13] The Applicant has not specified how the reasons she has cited fall into any of the grounds of appeal. 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. While she states that the decision is unfair and inhumane, she does not go so far as to say that the Review Tribunal failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[14] It is insufficient to make a general reference to the evidence that was before the Review Tribunal and to suggest that the Review Tribunal ought to have drawn a separate set of conclusions, as evidence that there was a failure to observe a principle of natural justice, error in law or an erroneous finding of fact.

[15] As the Applicant has not identified any grounds of appeal, I am unable to find that the appeal has a reasonable chance of success.

Additional Records

[16] Although the Applicant has filed additional medical records in support of her leave application and appeal, I am unable to consider them. The Applicant has not stated why she has filed the additional records or how they might fall into one of the grounds of appeal. If the Applicant filed the medical records 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. In short, there are no grounds upon which I can consider the additional medical records.

[17] In any event, the opinions of Drs. Huang and Brar were before the Review Tribunal. While Dr. Brar is of the opinion that the Applicant's disability is severe and permanent, it is for the trier of fact to determine whether she can be disabled for the purposes of the *Canada Pension Plan*.

Canada Pension Plan

[18] The Applicant submits that she is entitled to disability benefits as she has made contributions to the Canada Pension Plan and had expected that she would receive coverage, in the event any injuries or medical conditions were to arise which rendered her unable to work.

[19] The Federal Court of Appeal in *Miceli-Riggins v. Attorney General of Canada*, 2013 FCA 158 examined the objectives of the *Canada Pension Plan*. The Court stated:

[69] ... The *Plan* is not supposed to meet everyone's needs. Instead, it is a contributory plan that provides partial earnings-replacement in certain technically-defined circumstances. It is designed to be supplemented by private pension plans, private savings, or both. See *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28 (CanLII), 2000 SCC 28 at paragraph 9, 2000 SCC 28 (CanLII), [2000] 1 S.C.R. 703.

[70] Indeed, it cannot even be said that the *Plan* is intended to bestow benefits upon demographic groups of one sort or another. Instead, it is best regarded as a contributory-based compulsory insurance and pension scheme designed to provide some assistance – far from complete assistance – to those who satisfy the technical qualification criteria.

[71] Like an insurance scheme, **benefits are payable on the basis of highly technical qualification criteria.**

...

[74] In the words of the Supreme Court,

The *Plan* was designed to provide social insurance for Canadians who experience a loss of earnings due to retirement, disability, or the death of a wage-earning spouse or parent. It is not a social welfare scheme. It is a contributory plan in which **Parliament has defined both the benefits and the terms of entitlement**, including the level and duration of an applicant's financial contribution.

(*Granovsky, supra* at paragraph 9.) (my emphasis)

[20] Disability benefits are not available to everyone who suffers from a disability. It is clear that an applicant must meet certain requirements in order to qualify for disability benefits under the *Canada Pension Plan*. The Review Tribunal did not feel that she had met those requirements.

[21] As the Applicant has not pointed to any errors on the part of the Review Tribunal, I am unable to find that the appeal has a reasonable chance of success.

CONCLUSION

[22] Despite my sympathy for the Applicant and her circumstances, I am unable to grant leave. The Application is refused.

Janet Lew

Member, Appeal Division