

Citation: *M. M. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 39

Appeal No. AD-13-171

BETWEEN:

M. 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: 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 January 24, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant. The Applicant received the decision of the Review Tribunal sometime in February 2013. The Applicant filed an incomplete Application for Leave to Appeal and Notice of Appeal with the Pension Appeals Board on April 19, 2013. In response to a request for additional information, the Applicant submitted an Application Requesting Leave to Appeal (the “Application”) with the Appeal Division of the Social Security Tribunal (the “Tribunal”) on January 31, 2014.

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] In his Application dated April 19, 2013, the Applicant based his appeal on the grounds that the Review Tribunal had failed to consider his whole file and had failed to

appreciate the extent of his condition. He noted that his family physician Dr. Saunders also did not agree with the decision of the Review Tribunal.

[7] In his Application dated January 31, 2014, the Applicant submitted that his appeal has a reasonable chance of success because:

- a) There was lack of information,
- b) He is undergoing medical treatment, and
- c) He is still looking for an advocate/informed spokesperson to represent him.

[8] The Applicant referred to an accompanying two-page letter in which he set out the reasons for his appeal. There was no letter consisting of two pages, but instead there were two separate letters, both dated January 31, 2014 which accompanied his Application. In the first of his two letters, he noted that his counsel is of the opinion that the Review Tribunal had erred in that it had overlooked issues in his file. He submits that the appeal should be granted, based on all of the information (see page AD1C-7). In the second letter, the Applicant described how his disability restricts his activities. He noted upcoming medical procedures for his left hand and left knee. He also noted that he would be undergoing a new trial of medication which had just been recently approved in Canada. He did not feel that the Review Tribunal had thoroughly reviewed the evidence and pointed out that his physicians do not agree with the decision of the Review Tribunal (see page AD1C-9).

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 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] The Applicant has not specified how the reasons he has cited fall into any of the grounds of appeal. The fact that he is still undergoing medical treatment and is looking for an advocate or spokesperson to represent him does not constitute one of the grounds of appeal.

[14] The Applicant has not cited any errors of law which the Review Tribunal might have made, nor does he allege that the Review Tribunal based its decision on an erroneous finding of fact. While he states that there was lack of information, he does not, for instance, suggest that he had requested and been refused an adjournment of the hearing (which he might have requested to obtain additional information). He does not go so far as to suggest or say that the Review Tribunal failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[15] The Applicant described how his disability affects him. The Applicant indicates that his physicians disagree with the decision made by the Review Tribunal and submits that the Review Tribunal did not review or consider all of the evidence before it.

[16] In my view, the Review Tribunal was permitted to consider the evidence before it and attach whatever 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 his favour, I am unable to do this, as I am required to determine whether any of his reasons for the appeal fall within any of the grounds of appeal and whether any of them have a reasonable chance of success. The leave application is not an opportunity to re-assess the medical evidence or to re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*.

[17] 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.

[18] As the Applicant's reasons disclose no grounds of appeal for me to consider, I am unable to find that the appeal has a reasonable chance of success.

CONCLUSION

[19] The Application is refused.

Janet Lew

Member, Appeal Division