

Citation: *C. B. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 37

Appeal No. AD-13-145

BETWEEN:

**C. B.**

Applicant

and

**Minister of Human Resources and Skills Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: March 13, 2014

DECISION: LEAVE REFUSED

## **DECISION**

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

## **INTRODUCTION**

[2] On June 17, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant. On August 16, 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 her application seeking leave, the Applicant advised that her insurance company would be sending her medical file and that it also felt that she was entitled to Canada Pension Plan disability benefits.

[7] On or about August 27, 2013, the Applicant's insurer submitted its medical file, which included two reports which were not in evidence before the Review Tribunal, namely, an

- a) Initial Rehabilitation Report / File Review dated November 2, 2009 prepared by Lara Rock (pages AD1A-24 to AD1A-33) and
- b) Attending physician's supplementary statement dated May 23, 2012 (pages AD1A-37 and AD1A-38).

### **RESPONDENT'S SUBMISSIONS**

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

### **ANALYSIS**

[9] 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).

[10] 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.

[11] In this case, the decision of the Review Tribunal is considered to be the decision of the General Division.

[12] The Applicant has not specified how the reasons she has cited fall into any of the grounds of appeal.

[13] Although the Applicant has filed the Initial Rehabilitation Report and Attending physician's supplementary statement in support of her leave application and appeal, I am unable to consider any new materials. The Applicant has not stated why she has filed the Initial Rehabilitation Report and Attending physician's supplementary statement or how they might fall into one of the grounds of appeal. If the Applicant has filed the medical report 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 Initial Rehabilitation Report or Attending physician's supplementary statement.

[14] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some bases for her submissions without having the Appeal Division speculate as to what they might be. 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. I am not satisfied that the appeal has a reasonable chance of success.

## **CONCLUSION**

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

*Janet Lew*

Member, Appeal Division