Citation: *D. R. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 44

Appeal No. AD-13-174

BETWEEN:

D. R.

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 26, 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 9, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant, on the basis that he did not make sufficient contributions to the Canada Pension Plan for a minimum qualifying period. The Applicant filed an Application for Leave to Appeal and Notice of Appeal (the "Application") with the Pension Appeals Board on April 12, 2013. The Appeal Division of the Social Security Tribunal (the "Tribunal") received the Application on April 16, 2013.

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] The Applicant appeals because he contends that the Review Tribunal failed to review his whole file or consider his disability. He notes that he will never be able to do any physical work again.

RESPONDENT'S SUBMISSIONS

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

ANALYSIS

[8] The Review Tribunal found that the Applicant did not meet all eligibility requirements of the Canada Pension Plan in order to receive disability benefits. The Review Tribunal wrote,

> [12] In this case the Appellant did not make sufficient contributions to the CPP to meet the MQP. According to the Appellant's testimony, he was capable of working until his accident in August 2006; therefore, that is the earliest his contributory period could possibly end. In order to meet the contributory requirements for the CPP, the Appellant would have had to make contributions in at least four of the six years prior to December 2006: that is, 2001, 2002, 2003, 2004, 2005 and 2006. He only made contributions during that period in 2002, 2005 and 2006. Even if the Appellant became disabled after August 2006, there is no six-year period in which he made four years of contributions.
>
> [l3] A Review Tribunal is created by legislation and, as such, it only has the powers granted to it by its governing statute. A Review Tribunal is required to interpret and apply the provisions as they are set out in the CPP. A Review Tribunal cannot use the principles of fairness or equity or consider extenuating circumstances to disregard the contributory requirement in the CPP.

[9] The Review Tribunal held that as the Applicant did not meet the contributory requirements under the Canada Pension Plan, it did not need to consider whether he was disabled under the Act.

[10] While the Applicant is correct in stating that the Review Tribunal did not appear to review the medical evidence or consider his disability in determining whether he qualified for disability benefits, at the same time, if leave is to be allowed, he is required to set out some proper grounds for appeal in his leave application.

[11] 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).

[12] 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.

[13] For our purposes, the decision of the Review Tribunal is considered to be a decision of the General Division.

[14] The Applicant has not suggested that the Review Tribunal failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. He 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.

[15] Before a Review Tribunal can determine whether an applicant qualifies for a Canada Pension Plan disability benefit, it must be satisfied that the applicant has met three basic requirements, including that he has made valid contributions to the Canada Pension Plan for a minimum qualifying period ("MQP"), is between the ages of 18 and 65 and is considered disabled for the purposes of the *Canada Pension Plan*. If the applicant is unable to meet the first of these two basic criteria, it becomes unnecessary to determine whether he is disabled for the purposes of the *Canada Pension Plan.* Here, the Review Tribunal held that the Applicant did not meet the first of these basic requirements and hence it was unnecessary to determine whether he is disabled.

[16] In order for the Applicant to succeed on a leave application, he would need to show that there was some error on the part of the Review Tribunal in its decision not to proceed beyond this initial analysis. For instance, had the Review Tribunal applied the wrong subsection of the *Canada Pension Plan* in calculating the MQP that might have qualified as an error in law and may have been a ground of appeal which the Applicant could have advanced in seeking leave. Or, if the Review Tribunal had overlooked earnings from the Record of Earnings in its calculation of the MQP, that might have qualified as an erroneous finding of fact upon which it based its decision, and may have been grounds of appeal which the Applicant could have advanced in seeking leave. I am not suggesting that any errors were committed, but cite these merely as examples of grounds of appeal that could have been made for the purposes of a leave application.

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

CONCLUSION

[18] The Application is refused.

Janet Lew
Member, Appeal Division