Citation: *I. J. F. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 45

Appeal No. AD-13-178

BETWEEN:

I. J. F.

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 February 13, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant. The Applicant filed an incomplete Application for Leave to Appeal and Notice of Appeal (the "Application") with the Pension Appeals Board on April 2, 2013. He subsequently provided additional information and The Appeal Division of the Social Security Tribunal (the "Tribunal") confirmed receipt of his Application on December 18, 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 sets out two primary grounds of appeal in support of his application for leave to appeal the decision of the Review Tribunal. He submits that:

a) the Review Tribunal miscalculated his minimum qualifying period ("MQP") and

b) his prognosis is poor in that his condition is not expected to improve, and his disability is prolonged and continuing.

RESPONDENT'S SUBMISSIONS

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

ANALYSIS

[8] 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).

[9] 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.

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

Minimum Qualifying Period

[11] The Review Tribunal calculated the Applicant's MQP to be December 31, 1996, based on contributions to the Canada Pension Plan in the years 1987 to 1991, inclusive. The Applicant disagrees with the MQP, but does not state what he believes his MQP should be.

[12] While the Applicant submits that the MQP is incorrect, the Review Tribunal found that the parties agreed that the MQP is December 31, 1996 (see paragraph 7 of its decision). That said, the Review Tribunal also wrote,

> [16] The Appellant's representative confirmed that during the application process she was advised that the CPP is a contributory plan and that her brother's MQP is based on the years he made CPP contributions. She was told that if the Appellant pays into the plan for additional years, then his eligibility date might change, but this is something the Appellant would have to speak to an accountant about.

[13] There seems to be some recognition by the Applicant that if the MQP date is to change, it would be dependent upon whether he makes any subsequent or additional contributions to the Canada Pension Plan. He advised in his Application dated March 25, 2013 that he was consulting an accountant about making retroactive contributions based on earnings from his self-employment. At no time has the Applicant suggested that the Review Tribunal miscalculated his MQP based on the Earnings Record before it.

[14] For the purposes of this leave application, the Applicant is required to show that there was an error on the part of the Review Tribunal. If there is a change to be made to his MQP, based on anticipated subsequent or additional contributions to the Canada Pension Plan, that does not constitute an error on the part of the Review Tribunal.

[15] 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.

[16] As the Applicant has not identified any grounds of appeal where the calculation of his MQP is concerned, I am unable to find that the appeal has a reasonable chance of success on this issue.

[17] Even if the Applicant had made retroactive contributions prior to the determination of this leave application, and they were accepted as valid contributions, my decision would have remained unchanged, as the Applicant would have been required still to provide a

ground of appeal in his leave application and show an error on the part of the Review Tribunal. His recourse for any change to his MQP in the event that sufficient valid contributions are made is to the Minister.

Prolonged Disability

[18] The Applicant submits that his prognosis is poor in that his condition is not expected to improve. He also submits that his disability is prolonged and continuing. It is unclear how he ties these particular submissions to any errors which the Review Tribunal may have committed. Indeed, while the Review Tribunal may have found that there was no claim that the Applicant was disabled in 1996 and that there was no evidence to support a claim that he was disabled prior to 2000, the Review Tribunal made no findings about his current condition or his current prognosis. It cannot be said that the Review Tribunal made an erroneous finding of fact regarding his prognosis when none was made.

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

CONCLUSION

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

Janet Lew
Member, Appeal Division