

Citation: *D. L. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 56

Appeal No. AD-13-25

BETWEEN:

D. L.

Applicant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

DATE OF DECISION: April 2, 2014

DECISION: LEAVE REFUSED

DECISION

[1] The application for leave to appeal is refused.

INTRODUCTION

[2] On May 2, 2013 a Review Tribunal determined that a Canada Pension Plan disability pension not payable. The Applicant filed an application for leave to appeal (the “Application”) with Social Security Tribunal (SST) on June 3, 2013.

THE LAW

[3] 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”.

[4] Subsection 58(2) of the DERSD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

ISSUE

[5] The Member must decide if the appeal has a reasonable chance of success.

ANALYSIS

[6] 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 Development)*, [1999] FCJ No. 1252 (FC).

[7] Furthermore, the Federal Court of Appeal has found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[8] 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.

[9] The decision of the Review Tribunal is considered a decision of the General Division.

[10] In this case, the Applicant did not alleged that the Review Tribunal made any error, so no ground of appeal that has a reasonable chance of success is raised on this basis.

[11] In the application for leave to appeal, the Applicant summarized his medical conditions, including bipolar disorder, anxiety, depression, sleep apnea, diabetes, obesity and high blood pressure. All of these conditions were being treated with medication and therapy. This information was before the Review Tribunal. Its repetition does not establish a ground of appeal that has a reasonable chance of success.

[12] The Appellant also presented new information. He argued that his medication had increased, he had more trouble with his memory and information retention, and he would have another assessment of his functioning (GAF). In addition, although the Applicant testified at the Review Tribunal that he might be able to work driving a taxi, he now doesn't think he could do so. The presentation of new information is not a ground of appeal that can be considered under the DESD Act.

[13] The above-mentioned grounds of appeal essentially ask this Tribunal to reevaluate and reweigh the evidence that was put before the Review Tribunal. The Federal Court stated clearly in *Misek v. Canada (Attorney General)*, 2012 FC 890, that it is not for the

Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the Review Tribunal decision. For these reasons, I find that the Appellant has not presented any ground of appeal that has a reasonable chance of success in this matter.

CONCLUSION

[14] The Application is refused.

Valerie Hazlett Parker
Member, Appeal Division