

Citation: *S. S. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 49

Appeal No. AD-13-762

BETWEEN:

**S. S.**

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 27, 2014

DECISION: LEAVE REFUSED

## **DECISION**

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

## **BACKGROUND & HISTORY OF PROCEEDINGS**

[2] The Applicant seeks leave to appeal the decision of the Review Tribunal of June 14, 2013. The Review Tribunal had determined that a Canada Pension Plan disability pension was not payable to the Applicant, as it found that her disability was not “severe” at the time of her minimum qualifying period of December 31, 2011. The Applicant filed an application requesting leave to appeal (the “Application”) with the Appeal Division of the Social Security Tribunal (the “Tribunal”) on August 28, 2013, 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] The Applicant seeks leave to appeal on the grounds that her condition has deteriorated “so much” since the hearing before the Review Tribunal on December 5, 2012. Her doctors have advised her that she is considered legally blind and is not a candidate for surgery.

[7] The Applicant enclosed additional records in support of her appeal, including the following:

- a) Medical reports dated February 21, 2012 and August 12, 2013 of Dr. Jagan N. Aggarwal. He advised that the Applicant had been under his care for five years and had a history of migraine headaches and marked retinal distortion. He noted that she had seen five retinal surgeons, who were all of the opinion that surgical intervention is not recommended. She had been designated as partially blind. Her eyesight continued to deteriorate, to the point that she is legally blind. He felt that under these circumstances, she could not take on any gainful employment at any work. (The letter dated February 21, 2012 is marked as Exhibit A-02.)
- b) Medical report dated March 16, 2012 of Dr. Peter T. Huang, surgeon and ophthalmologist. She saw him with complaints of bilateral blurry vision and severe headaches. He discussed the risks and benefits of a corneal transplant. She was hesitant in proceeding with surgery.

[8] The Applicant's representative referred to paragraphs 32 and 33 of the Review Tribunal decision and submits that the new medical opinions show that the Applicant's disability is severe and prolonged.

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

[11] 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.

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

[13] I am required to determine whether any of her reasons fall within any of the grounds of appeal and whether any of them have a reasonable chance of success.

[14] Although the Applicant filed additional medical records with her Application, I am unable to consider any new materials, no matter how supportive they might be, given the narrow provisions of subsection 58(1) of the DESD Act. I note that the Review Tribunal indicates that it had thoroughly reviewed all of the documentation in the Hearing File. It highlighted the contents of the Hearing File.

[15] Even if I were permitted to review any additional medical records, the Applicant has not stated why she has filed these additional records. She has not indicated how the additional medical opinions fall into any of the grounds of appeal.

[16] If the Applicant has filed the medical reports 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. This is not a re-hearing of the merits of the claim. In short, there are no grounds upon which I can consider the additional medical reports, even if they bolster the evidence that was before the Review Tribunal.

## **CONCLUSION**

[17] Despite my sympathy for the Applicant and her circumstances, I am unable to grant leave. The Application is refused.

*Janet Lew*

Member, Appeal Division