

Citation: *D. O. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 54

Appeal No. AD-13-751

BETWEEN:

D. O.

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 28, 2014

DECISION: LEAVE REFUSED

DECISION

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

INTRODUCTION & HISTORY OF PROCEEDINGS

[2] The Applicant seeks leave to appeal the decision of the Review Tribunal of May 28, 2013. The Review Tribunal had determined that a Canada Pension Plan disability pension was not payable to the Applicant, as it found that his disability was not “severe” at the time of his minimum qualifying period. The Applicant filed an Application Requesting Leave to Appeal (the “Application”) with the Social Security Tribunal (the “Tribunal”) on November 13, 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 did not cite any particular grounds for the appeal. He advises that his insurer had asked him to appeal the decision of the Review Tribunal.

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.

[11] The Applicant has not identified any failure by the Review Tribunal to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction. He has not identified any errors in law which the Review Tribunal may have committed in making its decision. The Applicant has not identified any erroneous findings of fact which the Review Tribunal may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any grounds of appeal.

[12] 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 his submissions without having the Appeal Division speculate as to what they might be. The application is deficient in this regard and I am satisfied that the appeal does not have a reasonable chance of success.

CONCLUSION

[13] The Application is refused.

Janet Lew

Member, Appeal Division