

Citation: *K. R. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 59

Appeal No: AD-13-42

BETWEEN:

K. R.

Appellant

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 3, 2014

DECISION

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

INTRODUCTION

[2] On April 10, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (the “Application”) with the Appeal Division of the Social Security Tribunal (the Tribunal) on July 15, 2013.

ISSUE

[3] The Tribunal must decide whether the appeal has 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 DHRSD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

SUBMISSIONS

[6] The Applicant submitted that the Review Tribunal did not consider all of the medical evidence that was before it, and that the medical evidence referred to in the decision reflected only the non-supportive words of the reports, not their entirety.

[7] The Respondent made no 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 Development)*, [1999] FCJ No. 1252 (FC).

[9] 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.

[10] 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.

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

[12] I find that the Review Tribunal decision did not accurately reflect the medical evidence that was before it. For example, the MRI report that was before the Review Tribunal stated that the Applicant had a minimal disc bulge at L4-L5, and a disc protrusion at L5-S1 that displaced the nerve. This second finding was not mentioned in the decision and does not appear to have been considered by the Review Tribunal in making its decision.

[13] The decision also did not provide reasons for discounting Dr. McLean's opinion that the Applicant was unable to work, and that he had various physical restrictions. While the Federal Court has concluded that a Review Tribunal decision need not mention each and every piece of evidence that was before it, I find that in this case, the Review Tribunal made

an error by not providing reasons to discount the opinion of Dr. McLean who was the only doctor to provide reports in this matter.

[14] I find that these are grounds of appeal that have a reasonable chance of success.

CONCLUSION

[15] The Application granted.

[16] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division