

Citation: *P. J. K. v. Minister of Employment and Social Development*, 2014 SSTAD 61

Appeal No. AD-13-21

BETWEEN:

P. J. K.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: April 10, 2014

DECISION

[1] The Application for Leave to Appeal is refused.

INTRODUCTION

[2] By a decision issued April 12, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant. The Applicant has filed an Application for Leave to Appeal the said decision, (the “Application”), with the Social Security Tribunal, which application was received on July 10, 2013.

GROUND OF THE APPEAL

[3] In addition to complaining that the Review Tribunal made factual errors in its decision, the Applicant submits that the following situations prevailed at the hearing to her disadvantage. She infers they gave rise to a breach of natural justice on the part of the Review Tribunal. She states,

- a) That she had been informed that she would have time to answer a question but was denied sufficient time to do so;
- b) That she was denied an opportunity to refresh her memory from her notes;
- c) That she was given short shrift by one of the panel Members and told to make an application to the Ontario Disability Support Program, (ODSP);
- d) That the Review Panel gave more time to the Minister’s representative.

[4] She also complains that her level of pain has increased to the point where she is treated with narcotics and feels isolated.

THE LAW

[5] Ss. 56(1) of the *Department of Employment and Social Development (DESD) Act* provides that “an appeal to the Appeal Division may only be brought if leave to appeal is granted.” The subsection makes it clear that an appeal to the Appeal Division is not automatic: an Applicant must seek and obtain leave to bring his or her appeal. S. 58(3)

clarifies that “the Appeal Division must either grant or refuse leave to appeal”. Ss. 58(2) is the statutory provision governing the grant or refusal of an Application for Leave to Appeal. The test for granting leave is whether the Applicant requesting leave has raised an arguable case.¹ In *Carroll*² O’Reilly J. stated that an applicant “will raise an arguable case if she ...; raises an issue not considered by the Review Tribunal; or can point to an error in the Review Tribunal’s decision.

ISSUE

[6] At issue is whether the Application for Leave to Appeal discloses that the Appeal has a reasonable chance of success.

ANALYSIS

[7] In her Application for Leave to Appeal, the Applicant alleges that the Review Tribunal committed certain factual errors. She also alleges that certain conduct of the Review Tribunal gave rise to a reasonable apprehension of bias and therefore amounts to a breach of natural justice.

[8] The Tribunal can grant leave if the arguments submitted by the Applicant either raises an issue that was not considered by the Review Tribunal; or can point to an error in the Review Tribunal’s decision. In either case the Tribunal will be satisfied that the appeal has a reasonable chance of success.

The Factual Errors

[9] The Applicant complains that the Review Tribunal misstated the time period she worked for the mortgage broker. She notes that she worked from October 14, 2009 to November 11, 2009 and not from April 2009 to November 2009 as the Review Tribunal suggested in its reasons. While true, the Tribunal finds that, given the relatively brief time period involved,

¹ *Calihoo v. Canada (Attorney General)*, [2000] FCJ No.612 TD.

² *Canada (Attorney General) v. Carroll*, 2011 FC 1092.

this is not such a significant correction of the facts as would successfully ground an appeal. Leave cannot be granted on this ground.

The Allegations of Misconduct

[10] The Applicant complains that the members of the Review Tribunal treated her with disrespect. She states, they denied her time to answer a question fully; did not allow her to refresh her memory; advised her to make an application to another programme; and gave more hearing time to the Respondent's representative. Taken as a whole these are allegations of a breach of natural justice on the part of the Review Tribunal.

[11] These complaints about the hearing process do not, in and of themselves, ground an appeal. They point neither to errors in the decision or issues that the Review Tribunal failed to consider. They reflect the Applicant's subjective perception. The Tribunal is not satisfied that they are sufficient to ground an appeal. First, the Applicant does not give an instance where she requested and was denied the opportunity to refresh her memory. Second, the only instance where she makes reference or amplifies her testimony is in relation the identity of the employee with whom she experienced problems while she was employed at the mortgage broker. In the margins of her copy of the decision the Applicant writes that this employee was the owner's wife. While the information may go towards establishing that the Applicant did not quit her employment frivolously, the Tribunal finds that it would not have had a significant impact on the outcome of the hearing as it likely would have gone to show that the decision to quit was not based on the Applicant's disability.

[12] Thirdly, given the subjective nature of the Applicant's interpretation of the situation, the Tribunal rejects the Applicant's submission that the Review Tribunal member treated her with disrespect by keeping his head down after he questioned her. For the same reason, the Tribunal cannot accept that "cutting off" the Applicant necessarily led to a breach of natural justice.

[13] Similarly, the Tribunal finds that advising the Applicant to access the ODSP programme cannot amount to a breach of natural justice. It is evident from the materials that from the first refusal the applicant had been offered assistance concerning other programmes

that could assist her employment or financial position. Thus a suggestion that she access ODSP, particularly in the context of a refusal of her application cannot amount to a breach of natural justice.

[14] The Tribunal finds that while the hearing may have fell short of the Applicant's expectations in terms of its length and her opportunity to "tell her story"; there is not sufficient evidence before it to establish a breach of natural justice. Thus, leave to appeal cannot be granted on this ground.

The Applicant's Current Health Situation

[15] The Applicant states that her pain has increased; she is on narcotics; and she finds or feels herself isolated. Similar information was before the Review Tribunal when it made its decision. It is additional evidence that does not raise a genuine doubt about the decision made by the Review Tribunal. It is not a ground of appeal that has a reasonable chance of success.

CONCLUSION

[16] The Application for Leave to Appeal is refused.

Hazelyn Ross
Member, Appeal Division