

Citation: *M. N. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 64

Appeal No. AD-13-859

BETWEEN:

M. N.

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: April 11, 2014

DECISION

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

BACKGROUND & HISTORY OF PROCEEDINGS

[2] On March 13, 2013, a Review Tribunal determined that the Applicant could not cancel her Canada Pension Plan retirement pension in favour of a Canada Pension Plan disability benefit.

[3] On April 9, 2013, the Applicant filed an application requesting leave to appeal (the “Application”) with the Pension Appeals Board. The Application was considered received by the Appeal Division of the Social Security Tribunal (the “Tribunal”), within the time permitted under the *Department of Employment and Social Development (DESD) Act*.

ISSUE

[4] Does the appeal have a reasonable chance of success?

THE LAW

[5] 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”.

[6] 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

[7] The Applicant set out a number of grounds of appeal in support of her Application. They include the following, that she:

- i) has a nominal subsistence;

- ii) is no longer able to work;
- iii) is followed, harassed and slandered; and
- iv) at the time of her Application, had a court hearing scheduled for April 24, 2013, as she was a criminal victim.

[8] She noted that she is unable to tolerate steroids which were forced on her, that she was denied a referral to a rheumatologist, despite having various arthritic conditions, and is unable to spend hours on a computer, due to her right hand. She also submits that it would be in the best interests of justice to award her a disability pension.

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

[11] 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.

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

[13] There are no provisions in either the Act or the *Social Security Tribunal Regulations* which would allow me to grant leave on the grounds set out above in the submissions of the Applicant, as these do not fall within the grounds of appeal. An applicant is required to set out some proper grounds for appeal in her leave application. She must at the very least allege that the Review Tribunal committed an error.

[14] The Applicant has not suggested that the Review Tribunal failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. She has not cited any errors of law which the Review Tribunal might have committed, nor does she allege that the Review Tribunal based its decision on an erroneous finding of fact, made in a perverse or capricious manner or without regard for the material before it.

[15] The grounds cited by the Applicant are not relevant to a leave application and I am unable to consider them, given the very narrow provisions of subsection 58(1) of the Act.

[16] I am satisfied that the appeal does not have a reasonable chance of success.

CONCLUSION

[17] For the reasons stated above, the Application is refused.

Janet Lew

Member, Appeal Division