

Citation: *L. S. v. Minister of Employment and Social Development*, 2014 SSTAD 74

Appeal No. AD-13-32

BETWEEN:

L. S.

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 25, 2014

DECISION

[1] The Application for Leave to Appeal the decision of the Review Tribunal is refused.

INTRODUCTION

[2] By a decision issued February 7, 2013 a Review Tribunal determined that a *Canada Pension Plan*, (CPP), disability pension was not payable to the Applicant. The Applicant has applied for Leave to Appeal the decision, (“the Application”). The Social Security Tribunal received the Application on April 24, 2013.

GROUND OF THE APPLICATION

[3] In his letter to the Tribunal of April 15, 2013, Counsel for the Applicant states:

“It remains Ms. L. S.’s position that she continues to suffer with a severe and prolonged disability rendering her regularly incapable of pursuing any substantially gainful occupation.” Counsel goes on to state, “As you are aware the Minimum Qualifying Period is December 2008. Ms. L. S. [sic] was 57 years of age at this time and due to her language proficiency, education level, age, work record and life experience it remains our position that she is unable to pursue any substantially gainful occupation.”

ISSUE

[4] On this Application for Leave to Appeal the Tribunal must decide whether, on the basis of the Applicant’s submissions only, the appeal would have a reasonable chance of success.

THE LAW

[5] The relevant statutory provisions are found in ss. 56(1), 58(2) and 58(3) of the *Department of Employment and Social Development Act*, (the DESD Act). ss.56 (1) clarifies that there is no automatic right to an appeal. Thus, an Applicant must seek and obtain leave to bring an appeal before the Appeal Division. Ss.58 (3) of the DESD Act mandates that “the Appeal Division must either grant or refuse leave to appeal” while ss.58

(2) sets out on what basis leave to appeal is refused. Leave will be refused where the Appeal Division is not satisfied that the appeal has a reasonable chance of success. The jurisprudence establishes that the test for whether leave should be granted is whether there is an arguable case.¹ The Applicant must raise some arguable ground upon which the proposed appeal might succeed.² In *Carroll, O'Reilly J*³ 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.

[6] Leave to Appeal may also be granted where a breach of natural justice is established.⁴

ANALYSIS

[7] The only grounds advanced in support of the Application are as set out above. Basically, Counsel for the Applicant, and it must be taken that the Applicant also, disagrees with the conclusion of the Review Tribunal. He has put forward as the grounds of the appeal that the Applicant continues to suffer from a disability that meets the definition of paragraph 42(2)(a), of the CPP; that is, the Applicant continues to suffer from a severe and prolonged disability that renders her incapable regularly of pursuing any substantially gainful occupation. He also submits that a real world assessment of the Applicant supports her continued opinion that she is incapable regularly or pursuing any substantially gainful occupation.

[8] The Tribunal appreciates from the letter of the Applicant’s Counsel that she disagrees with the Review Tribunal decision. Nonetheless, in the Tribunal’s view the Applicant has failed to raise an arguable case. She neither raises an issue that the Review Tribunal did not consider nor does she point to an error in the Review Tribunal’s decision. The Applicant has submitted certain medical reports and evidence all of which predate the hearing and all of which were before the Review Tribunal. There is no suggestion that the

¹ *Callihoo v. Canada (Attorney General)*, [2000] FCJ No. 612 TD at para. 15.

² *Canada (Attorney General) v. Zakaria*, 2011 FC 136 at para. 37.

³ *Canada (Attorney General) v. Carroll*, 2011 FC 1092.

⁴ *Callihoo v. Canada (Attorney General)*, [2000] FCJ No. 612 TD.

Review Tribunal failed to consider any of the Applicant's medical evidence. Disagreeing with the decision is not sufficient to meet the test in *Carroll*. Accordingly, the Tribunal refuses the Application.

CONCLUSION

[9] Leave to Appeal is refused.

Hazelyn Ross
Member, Appeal Division