Citation: *C. A. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 72

Appeal No: AD-13-652

BETWEEN:

C. A.

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 23, 2014

DECISION

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

INTRODUCTION

[2] On June 28, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension 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 4, 2013.

ISSUE

[3] The Tribunal must decide whether 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(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.

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

[7] 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".

SUBMISSIONS

[8] The Applicant submitted in support of the Application that the Review Tribunal erred in fact or in law for the following reasons:

a) It did not properly weigh some of the medical evidence, dated both before and after the Minimum Qualifying Period, and testimony before it in coming to its decision;

b) It seemed to require that the Applicant provide medical evidence that stated that her pain was severe;

c) It found that the Applicant was able to drive for two hours per day, not up to two hours in a day as the Applicant testified;

d) The Applicant proffered further medical evidence to support her claim.

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

[11] 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.

[12] The Applicant argued at some length that the Review Tribunal erred by giving the weight it did to various parts of the evidence before it. By doing so she essentially asks this Tribunal to reevaluate and reweigh the evidence that was put before the Review Tribunal which is the province of the trier of fact and not of an appeal court – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. The Federal Court stated clearly in *Misek v. Canada (Attorney General)*, 2012 FC 890, that it is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the Review Tribunal decision. These reasons in these decisions are binding on me. I was not present at the Review Tribunal hearing, and am not able to reweigh the oral evidence that was presented at that hearing. The Applicant did not allege that the Review Tribunal did not consider the evidence. Therefore, I find that this ground of appeal does not have a reasonable chance of success.

[13] The Applicant also argued that the Review Tribunal seemed to require the Applicant to produce medical records that stated her condition was severe for her claim to succeed. The Review Tribunal decision does not require this. The decision notes that there was no medical report of this nature. The decision considered and weighed all of the evidence, including medical reports dated before and after the Applicant's Minimum Qualifying Period. Therefore, this is not a ground of appeal that has a reasonable chance of success.

[14] The Applicant argued that the Review Tribunal erred in fact regarding the length of time that she could tolerate driving. In order for this to be a ground of appeal that has a reasonable chance of success, this error must be made in a perverse or capricious manner or without regard for the material before it. I find that this factual error was not perverse, nor significant. This is not a ground of appeal that has a reasonable chance of success.

[15] Finally, the Applicant presented further medical evidence to support her claim. Section 58(1) of the DESD Act sets out all of the available grounds of appeal. The provision

of new evidence is not one of them. Therefore this is not a ground of appeal that has a reasonable chance of success.

[16] If the Applicant has filed the medical reports in an effort to rescind or amend the decision of the Review Tribunal, she must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and she must also file an application for rescission or amendment with the same Division that made the decision (or in this case, the General Division of the Social Security Tribunal). There are additional requirements that an Applicant must meet to succeed in an application for rescinding or amending a decision. Section 66 of the DESD Act also requires an applicant to demonstrate that the new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. The Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so. This is not a re-hearing of the merits of the claim.

CONCLUSION

[17] The Application is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division