

Citation: *P. B. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 67

Appeal No: AD-13-45

BETWEEN:

P. B.

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 16, 2014

DECISION

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

INTRODUCTION

[2] On May 22, 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 August 12, 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(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 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

[8] The Applicant submitted in support of the Application that he should be granted leave to appeal because:

- a) He correctly calculated what he was to contribute to the Canada Pension Plan (CPP), and did not contribute after 2003 because his earnings were too low to require same;
- b) The CPP contribution requirements discriminate against him;
- c) He is disabled by arthritis.

ANALYSIS

[9] 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).

[10] 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.

[11] The Applicant did not allege that the Review Tribunal made any errors in its findings of fact, so no ground of appeal that has a reasonable chance of success is presented on this basis.

[12] The Applicant argued that he did not contribute to the CPP because his earnings were too low to require this after 2003. Therefore, he should be considered to have contributed in these years as he worked and made a zero contribution as required by law. The CPP requires that a minimum amount be contributed to the CPP each year for those years to be included when calculating the Minimum Qualifying Period. The Review Tribunal made no error in calculating the Applicant's Minimum Qualifying Period for disability pension, nor in its statement of the contributory requirements under the CPP. This argument therefore does not disclose a ground of appeal that has reasonable chance of success.

[13] Finally, the Applicant argued at the Review Tribunal hearing that the CPP contribution requirement discriminated against him. This argument was considered and rejected. The Applicant did not argue that the Review Tribunal made any error in reaching this decision. The Applicant's restatement of this argument is not a ground of appeal that has a reasonable chance of success.

CONCLUSION

[14] The Application is refused for the reasons stated above.

Valerie Hazlett Parker
Member, Appeal Division