Citation: *C. B. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 68

Appeal No: AD-13-53

BETWEEN:

C. 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 January 10, 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 April 18, 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 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:

a) The Review Tribunal failed to observe a principle of natural justice;

b) The Review Tribunal made an error in law, or in the alternative an erroneous finding of fact in a perverse or capricious manner or without regard to the material before it;

c) The Review Tribunal did not give proper consideration to the medical evidence;

d) The Review Tribunal improperly concluded that the Applicant was not disabled;

e) The Review Tribunal did not give proper weight to the Applicant's condition, and did not properly consider the Applicant's testimony;

f) The Applicant would provide further evidence in support of her claim.

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 argued that the Review Tribunal failed to observe natural justice, or made an error of law or fact as grounds of appeal. She did not, however, provide any facts or explanation to support these bald allegations. I find that these grounds of appeal are not clear without such explanation. In *Pantic v. Canada (Attorney General)*, 2011 FC 591, the Federal Court concluded that a ground of appeal cannot be said to have a reasonable chance of success if it is not clear. Therefore, these grounds of appeal have no reasonable chance of success.

[12] The Applicant also argued that the Review Tribunal did not give proper consideration to the medical evidence and the Applicant's testimony at the hearing. The Review Tribunal decision summarized all of the medical evidence that was before it. The decision also summarized the testimony. The Federal Court of Appeal has decided that the Review Tribunal is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence need not be mentioned in the written decision of the review tribunal – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, I find that the Applicant has not established this to be a ground of appeal that has a reasonable chance of success.

[13] The Applicant also argued that the Review Tribunal erred in finding that the Applicant was not disabled. She did not provide any evidentiary or legal basis for this assertion. The *Simpson* decision states that assigning weight to evidence, whether oral or written, is the job of the trier of fact, which is the Review Tribunal. A Member hearing an application for leave to appeal may not substitute their view of the evidence for that of the trier of fact. I find that an invitation to reweigh the evidence is not a ground of appeal that has a reasonable chance of success.

[14] Finally, the Applicant argued that she would provide further evidence to support her disability claim. Section 58(1) of the DESD Act provides for all grounds of appeal. The

provision of new evidence is not a ground of appeal permitted by the legislation. Therefore this ground of appeal does not have a reasonable chance of success.

[15] If the Applicant wishes to file 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.

CONCLUSION

[16] The Application is refused for the reasons set out herein.

Valerie Hazlett Parker
Member, Appeal Division