

Citation: *P. M. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 109

Appeal No: AD-13-660

BETWEEN:

P. M.

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: May 16, 2014

DECISION

The Tribunal grants leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[1] On June 17, 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 September 19, 2013.

ISSUE

[2] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[3] 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”.

[4] 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.

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

[6] 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

[7] The Applicant argued that she should be granted leave to appeal because the Review Tribunal made an error in law and fact by not considering medical evidence presented to them from Dr. Smith, family physician, Dr. Murphy, psychotherapist and pain specialist, and an Occupational Therapist employed by the Arthritis Society.

[8] The Applicant also argued that the Review Tribunal erred by not considering evidence that the Applicant mitigated her situation by following medical treatment recommendations.

[9] Finally, the Applicant argued that the Reviewed Tribunal erred in law by not considering the cumulative effect of all of her medical conditions.

[10] The Respondent made no submissions.

ANALYSIS

[11] 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).

[12] 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.

[13] The Review Tribunal is presumed to have considered all of the evidence that was before it at the hearing. This presumption can be rebutted. In this case, the Applicant

presented reports from Dr. Smith her family physician. This was clearly considered by the Review Tribunal as it is mentioned in the decision.

[14] The Applicant also presented reports from Dr. Maher, Dr. Murphy, and an Occupational Therapist employed with the Arthritis Society. The Review Tribunal decision does not refer to these reports. These reports concluded that the Applicant was disabled. The decision does not provide any reasoning to establish why this information was not taken into account, what weight was given to it, or why it was disregarded. This is an error. The Applicant's argument that these reports were not considered has a reasonable chance of success on appeal.

[15] The Applicant also argued that the Review Tribunal did not properly consider the cumulative effect of all of her medical conditions in determining that she was not disabled under the CPP. The Review Tribunal decision discusses each of the Applicant's medical conditions, and their treatment. It does not address the cumulative effect of these conditions. I find that argument also gives rise to a ground of appeal that has a reasonable chance of success.

CONCLUSION

[16] The Application granted for the reasons stated above.

[17] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division