

Citation: *C. A. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 111

Appeal No. AD-13-1070

BETWEEN:

C. A.

Applicant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: May 16, 2014

DECISION

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

BACKGROUND & HISTORY OF PROCEEDINGS

[2] The Applicant seeks leave to appeal the decision dated May 31, 2013 of the General Division of the Social Security Tribunal (the “General Division”).

[3] The Applicant applied for a *Canada Pension Plan* disability pension on May 5, 2009. The Respondent denied the application at the initial level and on April 15, 2010 denied the application at the reconsideration level. The Applicant sought an appeal of the Respondent’s decision to a Review Tribunal on January 18, 2013, beyond the time limit set out in the *Canada Pension Plan*. As the Applicant had exceeded the time for filing an appeal, he sought an extension of time for filing. His counsel provided written submissions supporting his request for an extension of time.

[4] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* stipulates that any appeals filed with but not heard by the Review Tribunal prior to April 1, 2013 are deemed to have been filed with the General Division. As the Review Tribunal had yet to make a determination on the Applicant’s request for an extension of time by April 1, 2013, it was left with the General Division to determine whether to allow an extension of time to appeal.

[5] On May 31, 2013, the General Division of the Social Security Tribunal refused to grant an extension of time to appeal the Respondent’s decision of April 15, 2010. The Social Security Tribunal notified the Applicant of the General Division’s decision on June 14, 2013, and advised him that if he intended to appeal the decision, he had 90 days within which to file an Application Requesting Leave to Appeal to the Appeal Division.

[6] The Applicant now seeks leave to appeal the decision of the General Division. He filed an Application Requesting Leave to Appeal to the Appeal Division on August 26,

2013, within the time permitted under the *Department of Employment and Social Development (DESD) Act*.

ISSUE

[7] Would an appeal from the decision of the General Division have a reasonable chance of success?

THE LAW

[8] According to subsections 56(1) and 58(3) of the 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”.

[9] 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”.

APPLICANT’S SUBMISSIONS

[10] The Applicant disagrees with the decision of the General Division. He alleges that the General Division failed to observe a principle of natural justice in making its decision. He did not provide any additional submissions or any information as to how the General Division might have failed to observe a principle of natural justice.

RESPONDENT’S SUBMISSIONS

[11] The Respondent has not filed any written submissions.

ANALYSIS

[12] 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 for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[13] Subsection 58(1) of the DESD Act set out the grounds of appeal as being limited to 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.

[14] I am required to determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal and whether any of them have a reasonable chance of success. Here, the Applicant alleges that the General Division failed to observe a principle of natural justice in making its decision, but did not provide any additional submissions or information beyond his bare-bones statement that the General Division made an error.

[15] In my view, the Applicant is required to set out some particulars of the error or failing committed by the General Division. It is insufficient to make a general statement of the test to be met, without pointing to the specific error or failing, as it provides no guidance or direction as to how I am to consider the application for leave.

[16] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, he ought to, at the very least, set out some bases for the leave application beyond making a general statement that an error was made, without having the Appeal Division speculate as to what that error or failing might be.

CONCLUSION

[17] The Applicant has not cited with any specificity how the General Division might have failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, I am unable to find that the appeal has a reasonable chance of success and I therefore refuse the Application for leave.

Janet Lew

Member, Appeal Division