

Citation: *M. C. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 127

Appeal No: AD-13-776

BETWEEN:

M. C.

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 30, 2014

DECISION

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

INTRODUCTION

[2] On June 11, 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 Tribunal on September 5, 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”.

SUBMISSION

[8] The Applicant submitted in support of the Application that she would like another opportunity to prove her case, and set out her medical diagnoses.

[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] Section 58 of the DESD Act sets out very narrow grounds of appeal that can be considered by the Appeal Division. Arguments presented to request leave to appeal must fall within the ambit of section 58 of the DESD Act to have a reasonable chance of success.

[13] The Appellant argued that she would like another opportunity to present her case. This argument does not fall within section 58 of the DESD Act. It is not an allegation that the Review Tribunal made an error in law or in fact, or that natural justice was breached. Therefore, this ground of appeal has no reasonable chance of success.

[14] The Appellant also repeated her medical diagnoses, and referred to specific medical reports regarding each diagnosis. This evidence was before the Review Tribunal. The Appellant did not allege that the Review Tribunal made any error in its consideration of this

evidence. A repetition of this evidence does not have a reasonable chance of success on appeal.

CONCLUSION

[15] For these reasons the Application is refused.

Valerie Hazlett Parker

Member, Appeal Division