

Citation: *N. S. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 128

Appeal No: AD-14-130

BETWEEN:

**N. S.**

Appellant

and

**Minister of Human Resources and Skills Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal Decision**

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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 January 15, 2014, the General Division of the Social Security Tribunal (the “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 Tribunal on February 6, 2014.

## **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 the following in support of the Application:

- a) The facts of the case were not diligently applied;
- b) The law, policies and adjudicative framework were ignored;
- c) Reasonably satisfied standard was ignored;
- d) Insufficient weight was given to medical evidence and oral testimony;
- e) Personal characteristics and socio-economic factors were ignored;
- f) The severe criterion was not looked at in a holistic manner; and
- g) The Appellant is incapable of regularly pursuing any substantially gainful occupation.

[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] The Appellant put forward a number of arguments in support of this Application. She argued that the facts of her case were not diligently applied, that law, policies and adjudicative framework were ignored, and that the reasonably satisfied standard was not applied. These allegations are made with no factual basis to support them. There is also no explanation of how any of these statements fall within the provisions of section 58 of the DESD Act. Accordingly, I find that these arguments do not have a reasonable chance of success on appeal.

[13] The General Division decision summarized both the written and oral evidence. It also considered all of the medical conditions that the Appellant claimed impacted her ability to work. The Appellant argued that insufficient weight was given to the medical and oral evidence. With this argument, she essentially asks the Appeal Division of the Tribunal to reevaluate and reweigh the evidence that was put before the General Division. This is the province of the trier of fact, in this case the General Division. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the tribunal who made the findings of fact (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). Therefore, I find that this argument does not have a reasonable chance of success.

[14] In addition, the Appellant argued that the General Division did not consider her personal characteristics or socio-economic factors. The General Division decision did consider the Appellant's age, education and other circumstances in reaching the decision. In the *Canada (MHRD) v. Rice* decision (2002 FCA 47) the Federal Court of Appeal concluded clearly that socio-economic factors are not relevant to a determination of whether a person is disabled under the CPP. The General Division therefore made no error in not considering them, and I find that this argument does not have a reasonable chance of success.

[15] The Appellant also argued that the General Division did not look at the severe criterion with a holistic approach. The decision considered the Appellant's medical issues,

together with her age, education, work experience, etc. I find that it made no error in so doing. This argument therefore has no reasonable chance of success on appeal.

[16] Finally, the Appellant repeated the position she put forward at the General Division, that she is incapable regularly of pursuing any substantially gainful occupation. This is the legal issue determined in the General Division decision. This restatement of her position is not an argument that has a reasonable chance of success on appeal.

## **CONCLUSION**

[17] The Application is refused as the Appellant has not put forward any argument that has a reasonable chance of success on appeal.

*Valerie Hazlett Parker*  
Member, Appeal Division