Citation: *T. G. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 136

Appeal No: AD-13-701

BETWEEN:

T. G.

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: June 3, 2014

DECISION

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

INTRODUCTION

[2] On June 12, 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 Tribunal on September 11, 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 the following in support of the Application:

a) He had further medical information to support his claim that was not submitted at the hearing as his Representative was not permitted to do so;

b) Natural justice was denied, and the Review Tribunal made errors of fact that could be capricious, and errors of law;

c) The Review Tribunal erred by writing the wrong doctor's name as the author of a report that said there was nothing wrong with the Appellant;

d) The Appellant was accommodated by his former employers;

e) The Appellant was terminated by his last employer due to shortage of work, but not recalled when other employees were; and

f) The Appellant included numerous medical reports that were not before the Review Tribunal.

[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 made allegations that natural justice had been breached, and that the Review Tribunal made errors of law and errors of fact that may have been capricious in nature. He did not provide any factual basis for these allegations. Without some factual basis, I am unable to conclude that any ground of appeal with a reasonable chance of success has been raised with these arguments.

[13] The Appellant also argued that the Review Tribunal erred by writing the wrong author of a medical report that concluded there was nothing wrong with him. In order for this argument to have a reasonable chance of success, this factual error must have been made in a capricious or perverse manner. I find that it was not, and that the error was not material to the decision made by the Review Tribunal.

[14] The Appellant also submitted that he was not recalled to work when his co- workers were. It is not clear to me whether this information was before the Review Tribunal. It is not referred to in the Review Tribunal decision. In *Simpson v. Canada (Attorney General)*, 2012 FCA 82 the Federal Court of Appeal held that the Review Tribunal need not mention every piece of evidence that is before it, and is presumed to have considered all of the evidence. If it was before the Review Tribunal, I find that the fact that it was not specifically mentioned in the decision is not an error that has a reasonable chance of success on appeal.

[15] If this is new evidence, I cannot consider it in deciding whether to grant leave to appeal. Section 58 of the DESD Act sets out very narrow grounds of appeal. The provision of new evidence is not one of them. Therefore, this argument does not have a reasonable chance of success.

[16] The Appellant argued, further, that he had additional medical evidence that his representative was not permitted to present for the hearing of this matter. While that may be so, it is not up to a Review Tribunal or this Tribunal to ensure that all relevant evidence is before it when it makes a decision. The fact that some relevant evidence may not have been

before the Review Tribunal is not a ground of appeal under the DESD Act that has a reasonable chance of success. An appeal to the Appeal Division of the Tribunal is not a re-hearing of the case.

[17] The Appellant provided a number of medical reports with the Application in support of his claim. If he has done so in an effort to rescind or amend the decision of the Review Tribunal, he must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and he must also file an application to rescind or amend the decision with the same Division that made the decision (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 to rescind or amend 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. I have 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

[18] The Application is refused for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division