Citation: *B. R. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 144

Appeal No. AD-14-177

BETWEEN:

B. R.

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: June 9, 2014

DECISION

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

BACKGROUND

[2] The Applicant seeks leave to appeal the decision dated February 14, 2014 of the General Division of the Social Security Tribunal. The General Division had determined that a Canada Pension Plan disability pension was not payable to the Applicant, as it found that her disability was not "severe" at the time of her minimum qualifying period of December 31, 2000. The Applicant filed an application requesting leave to appeal (the "Application") with the Tribunal. The Application was considered received by the Tribunal on or about March 21, 2014, within the time permitted under the *Department of Employment and Social Development* (DESD) Act.

ISSUE

[3] Does this appeal have a reasonable chance of success?

THE LAW

[4] 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".

[5] 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

[6] The Applicant submits the following as grounds for appeal in her Application:

> "The decision maker did not place significant weight on the reason the appellant was forced to leave her primary employment as a practical nurse when she lost her

license to practice due to alcohol abuse. At that time, the appellant was consuming alcohol at the rate of a bottle of wine per day. The alcohol abuse continued to be the primary reason [the Applicant] remained unemployed from the time she left the nursing position. She was able to work sporadically over the period following her termination, but not work on a sustainable basis. The decision to deny entitlement was based in a good part on the appellant's lack of self-discipline which may have been improved if she had heeded the advice of her clinicians to avoid drinking. However, I would argue the condition known as alcoholism is a serious medical affliction and one which the person may deny or not engage in the proper treatment due to the very nature of the condition. However, what cannot be overlooked is the impact the condition has with respect to a person and their ability to work. The appellant in this case did attempt to mitigate her situation by attempting to work in a capacity other than nursing but her attempts at this employment were not successful either since she always reverted back to drinking again. I contend the worker did attempt to refrain from consuming alcohol but the disease prevented her from achieving this goal on a long-term basis. The majority of the vagueness and lack of memory noted in her testimony was due to the disease."

[7] The Applicant further submits the following:

"The General Division placed significant weight on the appellant's lack of mitigation of her alcohol abuse when she was advised by her psychiatrist on more than one occasion dating back to 1999, and specifically the consumption of alcohol would be detrimental to her mental condition. It is my position the appellant was not in the proper frame of mind at the time to heed her psychiatrist's advice noting this period occurred at the time [the Applicant] was suffering from "black-outs" due to the alcohol abuse. Furthermore, for the period 1999 to 2005 the appellant was unable to remain compliant in her treatment due to the continuing nature of her alcohol problem itself. However, she continued to suffer from alcoholism over the period she was not receiving medical treatment and as a result of her deteriorating health, she resumed treatment again with her psychiatrist on a regular basis. The decision-maker noted the worker was vague and struggled with remembering specifics, especially concerning her employment after the year 2000. The member noted the finding did not in any way a (*sic)* reflection (*sic)* on his (*sic)* honesty, but the testimony was compromised in that insufficient weight could not be placed on the appellant's evidence. I submit the vagueness and lack of memory are part of the symptoms of the alcoholism and therefore, the appellant cannot be penalized for this. As far as the appellant's lack of motivation in seeking treatment for her condition, again this is a general syndrome of the alcoholic syndrome."

[8] The Applicant did not specifically address how the General Division might have done any of the following:

(a) failed to observe a principle of natural justice, or otherwise acted beyond or refused to exercise its jurisdiction,

(b) committed any errors in law, or

(c) based its decision on an erroneous finding of fact in a perverse or capricious manner or without regard for the material before it.

[9] The Applicant submits that the General Division erred in the amount of weight it placed on the evidence.

RESPONDENT'S SUBMISSIONS

[10] The Respondent has not filed any written 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 for leave to be granted: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC).

[12] 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.

[13] 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 does not allege that the General Division failed to observe a principle of natural justice in making its decision, or that it committed any errors in law or based its decision on an erroneous finding of fact made without regard for the material before it, or in a perverse or capricious manner. The Applicant submits that the General Division placed insufficient weight on the reasons she left her primary employment and too much weight on her lack of mitigation.

[14] The Applicant's representative may well be correct in his submissions about the impact that alcoholism has had on the Applicant, but this would call for a reassessment and reweighing of the evidence. I am not permitted to re-assess or re-weigh the evidence on a leave application, given the narrow constraints of subsection 58(1) of the DESD Act. In any event, the submissions do not speak to any specific errors or failings on the part of the General Division, as contemplated under subsection 58(1) of the DESD Act.

[15] In *Simpson v. Canada (Attorney General),* 2012 FCA 82, the Applicant's counsel in that case identified a number of medical reports which she said that the Pension Appeals Board ignored, attached too much weight to, misunderstood, or misinterpreted. In dismissing the Applicant's application for judicial review, the Court of Appeal held that,

> "First, a tribunal need not refer in its reasons to each and every piece of evidence before it, but is presumed to have considered all the evidence. Second, assigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact. . ."

[16] The General Division was acting within its jurisdiction as the trier of fact in sifting through the relevant facts, assessing the quality of the evidence, determining what evidence, if any, it chose to accept or disregard, and in deciding on its weight, before ultimately coming to a decision based on its interpretation and analysis of the evidence before it. Hence, I can find no arguable case which might have a reasonable chance of success, arising out of the fact that the General Division chose to place more or less weight on some of the evidence than the Applicant submits was appropriate.

CONCLUSION

[17] The Application for leave is refused.

Janet Lew
Member, Appeal Division