

Citation: *M. S. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 137

Appeal No: AD-13-909

BETWEEN:

**M. 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: June 3, 2014

## **DECISION**

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

## **INTRODUCTION**

[2] On June 27, 2013, the General Division of the Social Security Tribunal (the “Tribunal”) dismissed the Applicant’s request for an extension of time to appeal. The Applicant filed an application for leave to appeal (the “Application”) from that decision with the Appeal Division of the Tribunal on September 26, 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:

- a) The processing of his claim was completed improperly by the Respondent, that he provided it with authorization to obtain further medical information, and they never advised him that it did not receive this;
- b) He disagreed with the Respondent’s conclusion that he was not disabled within the meaning of the CPP;
- c) He would provide further information at a later date; and
- d) He was provided with erroneous information regarding the processing of his claim by the Respondent.

[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 8 of the DESD Act sets out very narrow grounds of appeal that may be considered by the Tribunal. The Applicant's promise to provide further information at a later date does not fall within this provision. The Applicant provided no explanation or argument on how this could fall within the ambit of section 58 of the DESD Act. This argument has no reasonable chance of success on appeal.

[13] The remaining arguments made by the Applicant in support of his request for leave to appeal were before the General Division. The General Division decision considered these arguments. The Applicant does not allege that the General division made any error in law or fact. He did not allege that the General Division had not complied with its duty of fairness or breached natural justice. The repetition of arguments made at the General Division is not a ground of appeal that has a reasonable chance of success on appeal. This appeal is not a re-hearing of the Applicant's claim.

## **CONCLUSION**

[14] The Application is refused for these reasons.

*Valerie Hazlett Parker*  
Member, Appeal Division