

Citation: *R. S. H. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 146

Appeal No. AD-14-238

BETWEEN:

**R. S. H.**

Applicant

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: Janet LEW

DATE OF DECISION: June 9, 2014

## **DECISION**

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

## **BACKGROUND & HISTORY OF PROCEEDINGS**

[2] The Applicant seeks leave to appeal the decision of the General Division dated March 4, 2014. The General Division determined that a *Canada Pension Plan* disability pension was not payable to the Applicant, as it found that his disability was not “severe” at the time of his minimum qualifying period of December 31, 1997 (the “MQP”). The Applicant filed an Application Requesting Leave to Appeal (the “Application”) with the Tribunal on May 8, 2014, within the time permitted under *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”.

[6] Subsection 58(1) of the DESD Act sets out the grounds of appeal as being limited to 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.

### **APPLICANT'S SUBMISSIONS**

[7] The Applicant did not cite any particular grounds for the appeal. In his Application, he wrote:

“I was working since 2001, until 2011, and was self-employed since December 1997, until 2001, I was taking care of my kids full-time, while my wife was working. One of us had to stay home, so I received paternity leave for 6 months. This is a solid reason for me staying home, because my wife was contributing to CPP during this time.”

[8] The Applicant also wrote:

“In addition to the mentioned above, I have worked until 2011, but due to my health condition, I stopped working. I believe I have made enough contributions to CPP.”

### **RESPONDENT'S SUBMISSIONS**

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

[11] I am required to satisfy myself that 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, before leave can be granted.

[12] The Applicant has not identified any failure by the General Division to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction. He has not identified any errors in law which the General Division may have committed in making its decision. The Applicant has not identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[13] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some bases for his submissions which fall into the enumerated grounds of appeal, without having the Appeal Division speculate as to what they might be. The Application is deficient in this regard and I am satisfied that the appeal does not have a reasonable chance of success.

[14] If the Applicant is requesting that we re-assess the claim and re-weigh the evidence in his favour, I am unable to do this, given the very narrow constraints of subsection 58(1) of the DESD Act. The leave application is not an opportunity to re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*. The *Canada Pension Plan* does not permit this Tribunal to consider the impact its decisions may have on any of the parties, nor does it confer any discretion upon this Tribunal to consider other factors outside of the *Canada Pension Plan* – such as his family situation -- in deciding whether an applicant is disabled as defined by that Act.

## **CONCLUSION**

[15] The Application is refused.

*Janet Lew*

Member, Appeal Division