

Citation: *S. A. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 159

Appeal No. AD-13-655

BETWEEN:

S. A

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 23, 2014

DECISION

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

BACKGROUND

[2] The Applicant seeks leave to appeal the decision of the Review Tribunal issued on June 27, 2013. The Review Tribunal had 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, 2009. The Applicant filed an application requesting leave to appeal (the “Application”) with the Tribunal on or about September 23, 2013, 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’s submissions are contained in his note dated January 31, 2012, sent to the Office of the Commissioner of Review Tribunals. The note outlines his health conditions. The note is largely verbatim his letter dated December 16, 2010 to Service Canada, which was also before the Review Tribunal.

RESPONDENT'S SUBMISSIONS

[7] The Respondent has not filed any written submissions.

ANALYSIS

[8] 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).

[9] 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.

[10] For our purposes, the decision of the Review Tribunal is considered to be a decision of the General Division.

[11] 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, before leave can be granted.

[12] The Applicant has not identified any failure by the Review Tribunal 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 Review Tribunal may have

committed in making its decision. The Applicant has not identified any erroneous findings of fact which the Review Tribunal 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 not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[14] The Application is refused.

Janet Lew

Member, Appeal Division