

Citation: *S. K. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 164

Appeal No. AD-13-759

BETWEEN:

**S. K.**

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 25, 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 May 8, 2013. The Review Tribunal 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, 2010. The Applicant filed an application requesting leave to appeal (the “Application”) with the Social Security Tribunal on June 20, 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 disagrees with the decision of the Review Tribunal. She writes,

“I wish to leave to appeal because I do not agree with the Review Tribunal that my condition is not severe or prolonged, neither condition is going to get any better or go away. I have been on 5 different medications in the last 3 years with none of

them working for more than 6 months, therefore leading to bouts of depression lasting for up to 6 months at a time. I still have pain in my shoulder every day.”

## **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. She 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 her 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