Citation: *M. M. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 174

Appeal No: AD-13-207

BETWEEN:

M. M.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

DATE OF DECISION: July 14, 2014

DECISION

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

INTRODUCTION

[2] On March 7, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (the "Application") with the Appeal Division of the Tribunal on April 4, 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".

SUBMISSIONS

[8] The Applicant submitted in support of the Application that the Review Tribunal erred by not finding her disabled, and by not finding that she had a severe and prolonged disability.

[9] The Applicant also submitted new medical reports in support of her claim.

[10] The Respondent made no 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 in order for leave to be granted: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC).

[12] 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.

[13] The Applicant argued that she disagreed with the conclusion of the Review Tribunal. Mere disagreement with the conclusion reached by the Review Tribunal is not a ground of appeal within the parameters of section 58 of the DESD Act, and therefore has no reasonable chance of success on appeal.

[14] The Applicant also argued that the Review Tribunal made no finding with respect to her ability to work. Upon examination of the Review Tribunal decision, however, I find that they did so. They found that the Applicant possessed an ability to perform some sedentary work. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[15] The Applicant repeated a number of facts that were presented to the Review Tribunal in her evidence and the medical reports. Thus she has essentially asked this tribunal to reevaluate and reweigh the evidence that was put before the Review Tribunal. This is the province of the trier of fact. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the Review Tribunal who made the findings of fact – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, this argument does not have a reasonable chance of success on appeal.

[16] Finally, the Applicant produced additional medical reports that were not before the Review Tribunal. The production of new evidence is also not a ground of appeal under the DESD Act. If the Applicant has filed the medical reports in an effort to rescind or amend the decision of the Review Tribunal, she must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and she must also file an application to rescind or amend the decision with the same Division that made the decision (in this case, the General Division of this Tribunal). There are additional requirements that an Applicant must meet to succeed in an application to rescind or amend a decision. Section 66 of the DESD Act also requires an applicant to demonstrate that the new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. The Appeal Division has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so.

CONCLUSION

[17] The Application is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division