Citation: *W. O. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 171

Appeal No: AD-14-144

BETWEEN:

W. O.

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 7, 2014

DECISION

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

INTRODUCTION

[2] On January 24, 2014, the General Division of the Social Security Tribunal (the "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 February 21, 2014.

ISSUE

[3] The Tribunal must decide whether to grant leave to appeal at the Appeal Division if 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 he was not happy with the outcome of the hearing, that his words were "twisted" and "more to come".

[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] The Applicant did not allege that the General Division had made any error in fact, error in law or breached natural justice. In order to have a reasonable chance of success, his arguments must fall within one of these grounds of appeal. The fact that the Appellant was not happy with how the hearing went does not fall within any of these grounds of appeal, and does not have a reasonable chance of success.

[13] The Applicant also stated that his words were "twisted". He gave no explanation for how this was done, or how it should be corrected. Without this I cannot determine that this ground of appeal has any reasonable chance of success.

[14] Finally the Applicant wrote “more to come”. It is not clear to me what this means. In *Pantic v. Canada (Attorney General)*, 2011 FC 591, the Federal Court concluded that a ground of appeal cannot be said to have a reasonable chance of success if it is not clear. Therefore, this ground of appeal has no reasonable chance of success.

CONCLUSION

[15] The Application is refused for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division