

Citation: *J. J. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 172

Appeal No. AD-13-201

BETWEEN:

J. J.

Appellant

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: July 8, 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 March 15, 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 Pension Appeals Board on May 29, 2013. After April 1, 2013, the Applicant ought to have filed the Application with the Tribunal. Appeals filed with the Pension Appeals Board are considered to have been filed with the Appeal Division of the Social Security Tribunal. The Application is considered to have been filed within the time permitted under the *Department of Employment and Social Development (DESD) Act*.

[3] The Applicant filed a Notice of Appeal to the Social Security Tribunal – General Division on October 25, 2013, in response to a letter dated October 2, 2013, from the Tribunal. That letter simply advised that her Application had been incomplete, but would consider her Application to have been filed on time if she filed the requested information. The Tribunal subsequently accepted her Application as complete. I will consider the Notice of Appeal to the Social Security Tribunal – General Division as part of the leave application.

ISSUE

[4] Does this appeal have a reasonable chance of success?

THE LAW

[5] 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”.

[6] 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

[7] In her letter dated May 22, 2013, the Applicant provided an overview regarding her various medical conditions. She advised:

- She is slowly going blind;
- Two of her physicians have seen both eyes deteriorate since 2006. She has noticed that her eyesight has deteriorated substantially;
- She has been advised that the disease process is neurological in nature and that she would be referred to a second neurologist. She was also expecting a referral to another rheumatologist;
- She has also developed several other debilitating symptoms including confusion, loss of awareness and dizziness, which would not be caused by the medical condition for which she was already diagnosed;
- Multiple sclerosis is a disease that usually takes many years to diagnosis. She requests patience as she awaits appointments with specialists; and,
- She would be submitting new medical records.

[8] The Applicant submitted various medical records with her Application, including the following:

- a) Single Field Analysis of both eyes, dated November 23, 2006, July 12, 2007 and May 8, 2013;
- b) Ontario Ministry of Community and Social Services Form 2844 Limitations to Participation; and,
- c) Letter dated December 16, 2011 from the Ontario Ministry of Transportation advising that her driving privileges would remain suspended.

[9] In the Notice of Appeal – General Division, filed with the Tribunal on October 25, 2013, the Applicant largely repeated her submissions set out in the letter of May 22, 2013. She also provided a copy of the Treatment Record and consultation report of Dr. Kraag, rheumatologist, regarding her visit to him on September 3, 2013.

RESPONDENT'S SUBMISSIONS

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

[12] 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.

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

[14] 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.

[15] 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.

[16] 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.

[17] The various records, Form 2844 Limitations to Participation, correspondence from the Ministry of Transportation, and records of Dr. Kraag are of no relevance to this leave application. I am unable to consider them or, for that matter, any new or updated medical records of opinions, given the narrow constraints of subsection 58(1) of the DESD Act. This is not a re-hearing of the Applicant's claim. The leave application is not an opportunity to re-assess and re-weigh the evidence to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*.

CONCLUSION

[18] The Application is refused.

Janet Lew

Member, Appeal Division