

Citation: *N. G. v. Minister of Employment and Social Development*, 2014 SSTAD 184

Appeal No: AD-13-740

BETWEEN:

N. G.

Appellant

and

**Minister of Employment and Social Development
(Formerly 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 28, 2014

DECISION

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

INTRODUCTION

[2] On April 11, 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 Social Security Tribunal on June 5, 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 that he should be granted leave to appeal because:

- a) The Review Tribunal made errors of fact without regard to the material before it;
- b) The Review Tribunal erred by not considering his ulnar nerve dysfunction in determining whether he was disabled; and
- c) The Applicant included a letter of reference from an employer to support his claim.

[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 argued, first, that the Review Tribunal made errors of fact without regard to the material before it including what he planned to do upon moving to Vancouver Island, and that he rode a bicycle when he stated that he rode a tri-cycle. The Federal Court decided that to obtain leave to appeal an Applicant must establish errors of fact or law that

are unreasonable or perverse in light of the evidence – *Pantic v. Canada (Attorney General)*, 2011 FC 591. I find that these errors are not unreasonable or perverse, nor are they significant. This ground of appeal has no reasonable chance of success.

[13] The Applicant also alleged that he was only able to “design boats in his mind”, not construct them as found by the Review Tribunal. This may be an error of fact that would be unreasonable. Therefore, this ground of appeal raises an arguable case on appeal.

[14] The Applicant also submitted that the Review Tribunal erred by not considering his ulnar nerve dysfunction in coming to their conclusion. The Review Tribunal had medical reports before it that diagnosed this condition. The decision did not, however, consider this condition alone or in addition to the Appellant’s other medical conditions. It is an error of law for the Review Tribunal to not consider all of the Applicant’s medical conditions individually and in concert in making their decision. Hence, this ground of appeal also has a reasonable chance of success on appeal.

[15] Finally, the Applicant submitted a letter of reference from an employer in support of his application. The permitted grounds of appeal in the DESD Act do not permit me to consider new evidence. Therefore, the provision of this evidence does not raise an arguable case on appeal.

CONCLUSION

[16] The Application is granted as the Applicant has raised grounds of appeal that have a reasonable chance of success on appeal.

[17] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division