

Citation: *C. D. v. Minister of Employment and Social Development*, 2014 SSTAD 198

Appeal No. AD-14-245

BETWEEN:

C. D.

Applicant

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: Janet LEW

DATE OF DECISION: August 12, 2014

DECISION

[1] The Member of the Appeal Division of the Social Security Tribunal (the “Tribunal”) refuses the application for leave to appeal.

BACKGROUND

[2] The Applicant seeks leave to appeal the decision of the General Division issued on March 28, 2014. The Member of the General Division had determined that a Canada Pension Plan disability pension was not payable to the Applicant, as it found that his disability was not “severe” at the time of his minimum qualifying period of December 31, 2007. The Applicant filed an application requesting leave to appeal (the “Application”) with the Social Security Tribunal on May 6, 2014, 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 such that leave to appeal should be granted?

THE LAW

[4] According to subsections 56(1) and 58(3) of the 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 submits that the General Division erred in,

“making the decision of findings not based on medical documents provided, but on misinterpretation and bias (as in not having any medical background or training), towards overwhelming medical facts of disability.”

[7] The Applicant further submits that the decision of the General Division was made without regard to the material or without consideration of the facts in evidence.

[8] The Applicant further submits that the General Division ignored the principles of natural justice.

RESPONDENT'S SUBMISSIONS

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

[11] In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, the Federal Court of Appeal found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success.

[12] Subsection 58(1) of the DESD Act sets out the grounds of appeal as being limited to 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] The Applicant is required to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of them has a reasonable chance of success, before I can grant leave.

[14] It is insufficient for the purposes of a leave application to make bald submissions without some basis to support them. For instance, the Applicant submits that the General Division ignored principles of natural justice, yet does not enunciate nor describe how the General Division failed to do so. Similarly, the Applicant submits that the General Division made erroneous findings of fact without regard for the material or evidence before it, and that it misinterpreted medical documents, yet does not identify what those erroneous errors might be, nor identify what material or evidence the General Division failed to consider or misinterpreted.

[15] It is insufficient to make a general proposition about the errors or failings of the General Division, and to suggest that the General Division ought to have drawn a separate set of conclusions, as evidence that there was a failure to observe a principle of natural justice or that there was an error in law or an erroneous finding of fact.

[16] The Applicant also submits that the General Division was biased, on the basis that the Member of the General Division did not have sufficient medical expertise. There has been no evidence placed before me of any bias (or for that matter, the qualifications of the Member). Even if the qualifications of the Members were placed in evidence, the Applicant would need to demonstrate how the Member was biased. While an applicant is not required to prove bias or unfair treatment for the purposes of a leave application, at the very least, an applicant ought to set out some bases for his submissions. It is insufficient to suggest that a Member was biased because of what the Applicant perceives as insufficient qualifications.

[17] The Applicant needs to provide some supporting references or set out some basis in his submissions as to how the Member may have been unfair. As he has not done so, I find that this ground of appeal falls short in demonstrating that there could be a reasonable chance of success and I therefore deny leave on this ground.

[18] The Applicant has not cited with any specificity any errors of law or erroneous findings of fact upon which the General Division might have based its decision, nor how it might have failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. As the Applicant's reasons for appeal disclose no grounds of appeal for me to consider, I am unable to find that the appeal has a reasonable chance of success.

CONCLUSION

[19] The Applicant has not satisfied me that he has raised an arguable ground or that there is a reasonable chance of success, and as such, the Application is refused.

Janet Lew

Member, Appeal Division