Citation: *S. T. v. Minister of Employment and Social Development*, 2014 SSTAD 193

Appeal No: AD-13-742

BETWEEN:

S. T.

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: August 8, 2014

DECISION

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

INTRODUCTION

[2] On April 26, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Social Security Tribunal (Tribunal) on June 26, 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 the following arguments in support of the Application:

a) The Review Tribunal failed to appreciate the complexity of the Applicant's circumstances;

b) The fact that the Applicant's medical conditions were treated conservatively did not distract from their serious nature;

c) The Applicant did not adopt a disabled lifestyle; and

d) The appeal ought to have been allowed.

[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] 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 submitted that the Review Tribunal did not appreciate the complexity of her circumstances, and did not place sufficient weight on evidence regarding her treatment because it was conservative in nature. With these arguments, she essentially asks this Tribunal to 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, these arguments do not raise an arguable case on appeal.

[13] The Applicant also disagreed with the Review Tribunal's conclusion that she adopted a disabled lifestyle. This argument also asks this Tribunal to retry the evidence to reach a different conclusion. In *Gaudet v. Attorney General of Canada* 2013 FCA 254 the Federal Court of Appeal held that a reviewing tribunal is not to retry the issues, but to assess whether the outcome was acceptable and defensible on the facts and the law. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[14] Finally, the Applicant disagreed with the Review Tribunal's decision to dismiss the appeal. This argument does not contend that the Review Tribunal made an error of law or fact, that it did not observe the principles of natural justice or improperly exercised its jurisdiction. These are the only grounds of appeal under the DESD Act. Therefore, this argument does not have a reasonable chance of success on appeal.

CONCLUSION

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

Valerie Hazlett Parker
Member, Appeal Division