

Citation: *P. L. v. Minister of Employment and Social Development*, 2014 SSTAD 200

Appeal No: AD-14-204

BETWEEN:

P. L.

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 14, 2014

DECISION

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

INTRODUCTION

[2] On February 12, 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 with the Appeal Division of the Tribunal on April 15, 2014.

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] 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

[7] The Applicant submitted in support of the Application that:

- a) The Applicant was in a motor vehicle accident in 2010 which exacerbated his disabilities;
- b) The Applicant was disabled prior to the MQP; and
- c) The Applicant attempted to return to work, but that work was not substantially gainful.

[8] The Respondent made no submissions.

ANALYSIS

[9] 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).

[10] 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.

[11] All of the arguments put forward by the Applicant were also put forward at the hearing and were considered in the General Division Decision. The repetition of these arguments is not a ground of appeal that has a reasonable chance of success on appeal.

[12] In addition, these arguments do not allege that the General Division made any error in law or of fact, that the General Division did not observe the principles of natural justice or

did not properly exercise its jurisdiction. The provisions of the DESD Act restrict the granting of leave to appeal to arguments made on these enumerated grounds. For this reason also, no arguable case on appeal has been disclosed.

CONCLUSION

[13] The Application is refused.

Valerie Hazlett Parker
Member, Appeal Division