Citation: *A. R. v. Minister of Employment and Social Development*, 2014 SSTAD 195

Appeal No: AD-14-181

BETWEEN:

A. R.

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 11, 2014

DECISION

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

INTRODUCTION

[2] On February 17, 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 (the "Application") with the Appeal Division of the Tribunal on March 20, 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 General Division Member substituted his opinion for that of the medical doctor;

b) The General Division Member suggested that the Applicant's disability could not be severe if he retired and did not apply for long term disability;

c) The General Division Member did not give appropriate weight to some evidence;

[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] The Applicant submitted that he should be granted leave to appeal because the General Division Member substituted his opinion for that of one of the doctor's. It is the function of a Tribunal Member to conclude whether the Applicant has a disability that is severe and prolonged under the CPP. Therefore, it is not an error of law or fact within the parameters of section 58 of the DESD Act for the Member to reach this conclusion. This ground of appeal does not have a reasonable chance of success on appeal.

[12] In addition, the Applicant submitted that the General Division decision suggested that a disability could not be severe if the Applicant retired instead of applying for long-term disability benefits. The General Division decision refers to this as one factor that was considered, along with others, in determining whether the Applicant was disabled. It is not an error of law to consider all of the relevant factors in deciding the matter. This argument does not have a reasonable chance of success on appeal.

[13] Finally, the Applicant submitted that the General Division did not give appropriate weight to some of the evidence before it. With this argument, he essentially asks this tribunal to reevaluate and reweigh the evidence that was put before the General Division. This is the province of the trier of fact, which is the General Division. 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 General Division who made the findings of fact – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, this argument does not raise grounds of appeal that have a reasonable chance of success.

CONCLUSION

[14] The Application is refused.

Valerie Hazlett Parker
Member, Appeal Division