

Citation: *R. B. v. Minister of Employment and Social Development*, 2014 SSTAD 205

Appeal No: AD-14-241

BETWEEN:

R. B.

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 15, 2014

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal is refused.

INTRODUCTION

[2] On February 13, 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 May 1, 2014.

ISSUE

[3] The Tribunal must decide if 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 erred in concluding that the Applicant was not disabled, and her medical conditions make it impossible for her to work; and
- b) The Applicant had a great deal of difficulty testifying at the General Division hearing with the Translators;

[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] In addition, the Federal Court of Appeal has concluded 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] Section 58 of the DESD Act sets out the only grounds of appeal that can be considered by the Tribunal. These grounds are very narrow. The Applicant argued, first, that she disagreed with the conclusion reached by the General Division. She did not allege that the General Division decision erred in law or in fact, or that the General Division breached the principles of natural justice. This argument does not fall within the parameters of section 58 of the DESD Act. Therefore it does not have a reasonable chance of success on appeal.

[12] The Applicant also submitted that she had great difficulty giving evidence at the General Division hearing. This is reflected in the General Division decision. The Applicant did not allege, however, that she was not able to fully participate in the hearing, or that she was not able to give her evidence. There was no indication that any of the principles of natural justice were breached. Without this, the argument also does not have a reasonable chance of success on appeal.

CONCLUSION

[13] The Application is refused.

Valerie Hazlett Parker
Member, Appeal Division