Citation: *M. O. v. Minister of Employment and Social Development*, 2014 SSTAD 206

Appeal No: AD-14-244

BETWEEN:

M. O.

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

INTRODUCTION

[2] On April 7, 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 8, 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 that leave to appeal should be granted because the General Division member focused only on the stroke the Applicant suffered in 2009, and not the fibromyalgia and depression that she suffered from prior to the Minimum Qualifying Period (MQP).

[8] The Respondent made no submissions.

ANALYSIS

[9] The Federal Court has concluded that 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 argued that the General Division Member focused on the Applicant's stroke, which occurred after MQP, and not on the medical conditions that affected her at the MQP. The General Division decision refers to all of the Applicant's medical conditions at the MQP, and weighed the medical and oral evidence regarding them. The decision specifically referred to the medical evidence and testimony regarding fibromyalgia and depression. It is not for the Tribunal to reweigh the evidence and retry the matter on appeal, but only to determine whether the decision made was defensible in law and fact (see *Gaudet v. Attorney General of Canada*, 2013 FCA 354). Therefore, this argument does not have a reasonable chance of success on appeal.

CONCLUSION

[12] The Application is refused.

Valerie Hazlett Parker
Member, Appeal Division