

Citation: *B. S. v. Minister of Employment and Social Development*, 2014 SSTAD 208

Appeal No. AD-13-189

BETWEEN:

B. S.

Applicant

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: Hazelyn Ross

DATE OF DECISION: August 20, 2014

DECISION

[1] The Member of the Appeal Division of the Social Security Tribunal, (“the Tribunal”), refuses leave to appeal.

BACKGROUND

[2] The Applicant seeks leave to appeal the decision of the Review Tribunal issued on February 15, 2013. The Review Tribunal had determined that a *Canada Pension Plan* disability pension was not payable to the Applicant, as it found that her disability was not “severe” at the time of her minimum qualifying period of December 31, 2008. The Applicant filed an application requesting leave to appeal, (the “Application”), with the Tribunal on or about November 12, 2013. The Pension Appeals Board received the Application of Leave to Appeal on April 30, 2013. The Application was perfected on November 12, 2013, having been accepted as an Application that was made within the time permitted under the *Department of Employment and Social Development (DESD)*, albeit incomplete.

ISSUE

[3] Does this appeal have a reasonable chance of success?

THE LAW

[4] The applicable statutory provisions governing the grant of Leave are ss. 56(1), 58(1), 58(2) and 58(3) of the DESD Act. Ss. 56(1) provides, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” while ss. 58(3) mandates that the Appeal Division must either “grant or refuse leave to appeal.” Clearly, there is no automatic right of appeal. An Applicant must first seek and obtain leave to bring his or her appeal to the Appeal Division, which must either grant or refuse leave.

[5] 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”.

APPLICANT'S SUBMISSIONS

[6] The Applicant's submissions are contained in the letter of her Counsel, dated April 25, 2013, sent to the Chairman/Vice-chairman, Pension Appeals Board. The letter outlines the history of the Applicant's claim for CPP Disability Benefits. It asked that the letter be accepted as formal notice of the Applicant's desire to Appeal the Review Tribunal decision, i.e., that it be treated as an Application for Leave to Appeal the Review Tribunal's decision.

[7] The letter goes on to indicate the Applicant's position concerning her disability, namely, "we continue to submit that Ms. B. S. suffers from a severe and prolonged disability as defined by s. 42(2)(a) of the *Canada Pension Plan*." The letter also indicates that the Applicant is continuing to compile medical documentation of her disability and her intention of forwarding the same to the SST.

RESPONDENT'S SUBMISSIONS

[8] The Respondent has not filed any written submissions.

ANALYSIS

[9] On an Application for Leave to Appeal the hurdle that an Applicant must meet is a first, and lower one than that which must be met on the hearing of the appeal on the merits. However, to be successful, the Applicant must make out some arguable case¹ or show some arguable ground upon which the proposed appeal might succeed. In *St-Louis*², Mosley, J. stated that the test for granting a leave application is now well settled. Relying on *Calihoo*,³ he reiterated that the test is "whether there is some arguable ground on which the appeal might succeed." He also reinforced the stricture against deciding, on a Leave Application, whether or not the appeal would succeed.

¹ *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

² *Canada (A.G.) V. St. Louis*, 2011 FC 492

³ *Calihoo v. Canada (Attorney General)*, [2000] FCJ No. 612 TD para 15.

[10] 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.

[11] For our purposes, the decision of the Review Tribunal is considered to be a decision of the General Division.

[12] I am required to determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal and whether any of them have a reasonable chance of success, before leave can be granted.

[13] The Applicant has not identified any failure by the Review Tribunal to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction. She has not identified any errors in law which the Review Tribunal may have committed in making its decision. The Applicant has not identified any erroneous findings of fact which the Review Tribunal may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[14] While an Applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an Applicant ought to set out some basis for his or her submissions which fall into the enumerated grounds of appeal, without having the Appeal Division speculate as to what they might be. It is not sufficient for an Applicant to state their disagreement with the decision of the Review Tribunal and to express their

continued conviction that their health condition(s) renders them disabled within the meaning of the *Canada Pension Plan*.

[15] The Application is deficient in this regard. Therefore, I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[16] The Application is refused.

Hazelyn Ross
Member, Appeal Division