

Citation: *D. F. v. Minister of Employment and Social Development*, 2014 SSTAD 240

Appeal No: AD-14-262

BETWEEN:

D. F.

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: September 19, 2014

DECISION

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

INTRODUCTION

[2] On February 27, 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 30, 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 erred in not granting him a CPP disability pension;
- b) There was evidence that the Applicant was disabled at the hearing;
- c) Evidence that the Applicant could do some domestic chores should not necessarily be accepted as evidence of capacity to work;
- d) A realistic approach to capacity to work should be taken.

[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 argued that the General Division erred in not granting his application for CPP disability pension, and that there was evidence before it that he was disabled. With this argument, he essentially asks this tribunal to reevaluate and reweigh the evidence that was considered by the General Division to reach a different conclusion. This is the province

of the trier of fact, which in this case 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 tribunal who made the findings of fact – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, I find that this argument does not have a reasonable chance of success on appeal.

[12] The Applicant also argued that evidence of his ability to complete domestic chores should not necessarily be accepted as evidence that he had capacity to work. While this may be true, the General Division decision does not rely only on the Applicant's performance of domestic duties. It also considered the medical evidence that was presented. I therefore cannot conclude that the General Division erred by relying on such evidence to conclude that he was able to work. This argument also does not have a reasonable chance of success on appeal.

[13] Finally, the Applicant argued that the General Division should take a realistic approach to determine capacity to work. He did not allege that the General Division made an error in law or in fact by not doing so. He also did not provide any specific information to explain how this was not done in this case. Without this, the submission does not present an arguable case on appeal.

CONCLUSION

[14] The Application is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division