

Citation: *G. M. v. Minister of Employment and Social Development*, 2014 SSTAD 272

Appeal No. AD-13-745

BETWEEN:

**G. M.**

Applicant

and

**Minister of Employment and Social Development  
(formerly known as Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: September 30, 2014

## **DECISION**

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

## **BACKGROUND**

[2] The Applicant seeks leave to appeal the decision of the Review Tribunal issued on June 14, 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, 1997.

[3] On August 8, 2013, the Applicant filed an application requesting leave to appeal (the “Application”) with the Office of the Commissioner of Review Tribunals, when properly it should have been filed with the Social Security Tribunal. The Social Security Tribunal received the Application on or about the same date, and it was considered filed within the time permitted under the *Department of Employment and Social Development (DESD) Act*.

## **ISSUE**

[4] Does this appeal have a reasonable chance of success such that leave to appeal should be granted?

## **THE LAW**

[5] According to subsections 56(1) and 58(3) of the 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”.

[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”.

[7] Subsection 58(1) of the DESD Act sets out the grounds of appeal as being limited to 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.

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

#### **APPLICANT'S SUBMISSIONS**

[9] In a letter dated August 2, 2013, the Applicant requested that the Tribunal reverse the decision of the Review Tribunal. She did not set out any grounds of appeal.

[10] The Tribunal wrote to the Applicant by letter dated December 10, 2013, advising that it would accept her Application until it had received all of the required information from her. The Tribunal also advised that in order for the appeal to be filed, it would have to receive the grounds for the application, amongst other things.

[11] On March 2, 2014, the Applicant responded to the letter from the Tribunal. She advised that she was seeking leave as,

“she believes that it is unjust to have her case dismissed when in fact [she has] been suffering from a disability. The disability started prior to the end of [her] employment in 2007 and has continued to present. The disability is prolonged and severe and prevents [her] from gaining any meaningful employment and therefore to make a living. Although [she] was employed up to May 2007, [she] had to cease [her] employment because of the severe pain [she] was feeling in [her] left and right leg.”

[12] The Applicant expressed hope that with further review and consideration, she would qualify for a disability pension under the *Canada Pension Plan*.

### **RESPONDENT'S SUBMISSIONS**

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

### **ANALYSIS**

[14] 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 for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[15] In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, the Federal Court of Appeal found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success.

[16] The submissions and facts cited by the Applicant disclose no grounds of appeal for me to consider, as they do not identify any errors in law or findings of fact, nor any breaches of the principles of natural justice which the Review Tribunal may have committed. The Applicant has not satisfied me that the appeal has a reasonable chance of success.

### **CONCLUSION**

[17] The Application for leave to appeal is refused.

*Janet Lew*

Member, Appeal Division