

Citation: *A. C. v. Minister of Employment and Social Development*, 2014 SSTAD 247

Appeal No: AD-14-246

BETWEEN:

**A. C.**

Appellant

and

**Minister of Employment and Social Development  
(Formerly 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: VALERIE HAZLETT PARKER

DATE OF DECISION: September 22, 2014

## **DECISION**

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

## **INTRODUCTION**

[2] On March 18, 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 5, 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) She has a severe and prolonged disability which renders her disabled under the CPP;
- b) She does not have skills for other employment, and she was laid off from her last job because she could not perform her duties satisfactorily;
- c) She does not have a good command of the English language; and
- d) The evidence was not properly considered in making the decision.

[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 Appellant argued that she had a severe and prolonged disability, that she did not have skills to be employed, that she was let go from her employment for performance issues and that she does not have a good command of English as reasons that she should be granted leave to appeal. These facts were before the General Division, and considered in its

decision. With this argument, the Appellant asks this Tribunal to retry the evidence to reach a different conclusion. In *Gaudet v. Attorney General of Canada* 2013 FCA 254 the Federal Court of Appeal held that a reviewing tribunal is not to retry the issues, but to assess whether the outcome was acceptable and defensible on the facts and the law. The outcome in this matter was acceptable and defensible, so this argument does not have a reasonable chance of success on appeal.

[12] The Appellant also argued that the facts and evidence were not properly considered by the General Division. She did not provide any details or examples of this. The meaning of this argument is not clear without further explanation. In *Pantic v. Canada (Attorney General)*, 2011 FC 591, the Federal Court concluded that a ground of appeal cannot be said to have a reasonable chance of success if it is not clear. Therefore, this ground of appeal has no reasonable chance of success.

## **CONCLUSION**

[13] The Application is refused for these reasons.

*Valerie Hazlett Parker*  
Member, Appeal Division