

Citation: *D. H. v. Minister of Employment and Social Development*, 2014 SSTAD 261

Appeal No. AD-14-462

BETWEEN:

D. H.

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: Janet LEW

DATE OF DECISION: September 24, 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 General Division dated June 25, 2014. The General Division had determined that a *Canada Pension Plan* disability pension was not payable to the Applicant, as it found that his disability was not “severe” at the time of his minimum qualifying period of December 31, 2013 (the “MQP”). The Applicant filed an application requesting leave to appeal (the “Application”) with the Tribunal on August 18, 2014, within the time permitted under the *Department of Employment and Social Development (DESD) Act*.

ISSUE

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

THE LAW

[4] 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”.

[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 submits that the General Division made its decision without regard for the material before it. He submits that “all medical information before the Tribunal was ignored”. He further submits that his cardiovascular disease is severe and prolonged and will result in death.

RESPONDENT'S SUBMISSIONS

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

ANALYSIS

[8] 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).

[9] 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.

[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] 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. Here, the Applicant alleges that the General Division made its decision without regard for the evidence before it, but does not refer to any specific records or reports.

[12] The Applicant also alleges that the General Division ignored all medical information. Yet, the General Division did in fact refer to various medical reports, including those of the family physician, cardiologist and physiatrist.

[13] In my view, the Applicant is required to set out some particulars of the error or failing committed by the General Division. It is insufficient to make a general statement that the General Division ignored all the information or made its decision without regard for the material before it, without pointing to what information or material was ignored, and how that might have impacted upon the outcome, as otherwise the application provides no guidance or direction as to how I am to consider the application for leave.

[14] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, he ought to, at the very least, set out some bases for the leave application beyond making a general statement that an error was made, without having the Appeal Division speculate as to what that error or failing might be.

CONCLUSION

[15] The Applicant has not cited with any specificity how the General Division might have failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, I am unable to find that the appeal has a reasonable chance of success and I therefore refuse the Application for leave.

Janet Lew

Member, Appeal Division