

Citation: *C. G. v. Minister of Employment and Social Development*, 2014 SSTAD 255

Appeal No. AD-13-748

BETWEEN:

C. G.

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 23, 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 March 6, 2013. The Review Tribunal had determined that a Canada Pension Plan disability pension was not payable to the Applicant, as it found that his disability was not “prolonged” at the time of his minimum qualifying period of December 31, 2010.

[3] The Applicant filed an application requesting leave to appeal (the “Application”) with the Pension Appeals Board on June 4, 2013. The Social Security Tribunal received the Application on June 20, 2013. His Application 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 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”.

APPLICANT’S SUBMISSIONS

[7] The Applicant states he is appealing the decision of the Review Tribunal as his “heart conditions consistently further deteriorated due to injuries from [a motor vehicle

accident]”. He submits that he meets the criteria of having a severe and prolonged disability as such, qualifies for a disability pension under the *Canada Pension Plan*.

RESPONDENT’S SUBMISSIONS

[8] The Respondent has not filed any written 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 for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[10] 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.

[11] 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.

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

[13] The fact that the Applicant's medical condition has deteriorated over time is of no relevance to a leave application, as the Applicant is required to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of them has a reasonable chance of success, before I can grant leave.

[14] 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.

CONCLUSION

[15] The Applicant has not satisfied me that the appeal has a reasonable chance of success, and accordingly, the Application for leave to appeal is refused.

Janet Lew

Member, Appeal Division