

Citation: *C. B. v. Minister of Employment and Social Development*, 2014 SSTAD 337

Appeal No: AD-14-516

BETWEEN:

**C. B.**

Applicant

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: November 17, 2014

## **DECISION**

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

## **INTRODUCTION**

On May 15, 2014, the General Division of the Social Security Tribunal (the Tribunal) refused an extension of time for the Applicant to file an appeal with the General Division of the Tribunal. This decision was mailed to the Applicant on July 29, 2014 and received by her counsel on August 1, 2014. The Applicant filed an application for leave to appeal (the Application) with the Appeal Division of the Tribunal on September 29, 2014.

## **ISSUE**

[2] The Tribunal must also decide the appeal has a reasonable chance of success.

## **THE LAW**

[3] 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”.

[4] 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

[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”.

## **SUBMISSIONS**

[6] The Applicant submitted in support of the Application that :

- a) She was disabled under the Canada Pension Plan (CPP);
- b) The General Division sent a letter to her dated April 8, 2014 which requested written answers to questions posed by May 9, 2014. She retained counsel who responded to this by letter dated May 1, 2014. This letter was received by the Tribunal on May 7, 2014. This letter was not considered by the General Division Member when making the decision to deny an extension of time for appeal; and
- c) She would provide further medical evidence to support her claim.

[7] The Respondent made no 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 in order for leave to be granted: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC).

[9] 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.

[10] The DESD Act sets out very narrow grounds of appeal. Paragraph 58(1)(c) provides that one ground of appeal is if the decision in question was made without regard to the material before the decision maker. In this case, it is clear that the General Division Member wished to have additional information from the Applicant prior to making a

decision, and so requested this by written questions. It is also clear from an examination of the documents that the Applicant, through her counsel, responded to this request within the time given to do so. This response was not considered by the General Division Member in making the decision. Rather, the decision states that no response was received to the written questions. From this it is clear that the General Division decision was made without considering the material that was before it. This is an error and therefore this ground of appeal has a reasonable chance of success on appeal.

[11] The Applicant also argued that she would provide further medical evidence to support her claim that she is disabled. The promise of new evidence is not a ground of appeal that I can consider under section 58 of the DESD Act. Therefore, this argument fails.

[12] Finally, the Applicant also argued that she was disabled under the legislation. This statement does not point to any error committed by the General Division, so is not a ground of appeal that may have a reasonable chance of success on appeal.

## **CONCLUSION**

[13] The Application for leave to appeal is granted for these reasons.

[14] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

*Valerie Hazlett Parker*  
Member, Appeal Division