Citation: *D. L. v. Minister of Employment and Social Development,* 2014 SSTAD 338

Appeal No: AD-14-519

BETWEEN:

D. L.

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: 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

[2] On August 26, 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 September 30, 2014.

ISSUE

[3] The Tribunal must decide whether 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". 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.

[5] Subsection 58(2) of the DHRSD 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 the General Division erred in law as it adopted the Respondent's interpretation of medical reports rather than weighing the reports itself in making its decision.

[7] The Applicant also argued that the General Division based its decision on an erroneous finding of fact. The evidence indicated that the Applicant was prevented from working.

[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] In this case, the General Division did not have the benefit of all of the relevant medical reports to consider when making its decision. The hearing was conducted with only summaries of some medical reports prepared by the Respondent. The Applicant consented to proceeding with only these summaries after being given an opportunity to read them while at the hearing. There is no allegation that to so proceed was an error, and I make no finding on that.

[12] The Applicant argued that the General Division erred, however, when it adopted the Respondent's interpretation of these reports. The decision maker is obliged to consider and weigh all of the evidence before it. It would be an error to rely on one party to interpret the evidence and then adopt this interpretation in reaching its decision without weighing of the

evidence itself. Therefore, I find that this ground of appeal may have a reasonable chance of success on appeal.

[13] The Applicant also argued that the General Division decision erred in concluding that the Applicant would not have been prevented from working by her disability. With this argument she essentially asks this tribunal to reevaluate and reweigh the evidence that was put before the General Division. This is the province of the trier of fact (the General Division in this case). The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the decision maker who made the findings of fact – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, I find that this argument does not raise any grounds of appeal that have a reasonable chance of success.

CONCLUSION

[14] The Application is granted because the Applicant has raised a ground of appeal that may have a reasonable chance of success on appeal.

[15] 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