Citation: *R. F. v. Minister of Employment and Social Development,* 2014 SSTAD 329

Appeal No. AD-13-673

BETWEEN:

R. F.

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: Hazelyn Ross

DATE OF DECISION: November 13, 2014

DECISION

[1] The Social Security Tribunal (the "Tribunal") refuses leave to appeal.

BACKGROUND

[2] By way of an Application requesting Leave to Appeal (the "Application"), the Applicant seeks leave to appeal the decision of the Review Tribunal issued on June 27, 2013, that denied him payment of disability pension under the *Canada Pension Plan, ("*CPP*").*

[3] On or about September 13, 2013, the Applicant's representative filed an Application requesting Leave to Appeal (the "Application") with the Pension Appeals Board, which traversed the Application to the Tribunal.

GROUNDS OF THE APPLICATION

[4] In the Application, Counsel for the Applicant submits that the Review Tribunal,

> a. Failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; and
>
> b. 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.

ISSUE

[5] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[6] The applicable statutory provisions governing the grant of Leave are ss. 56(1), 58(1), 58(2) and 58(3) of the *Department of Employment and Social Development Act, ("*DESD Act"). Ss. 56(1) provides, "an appeal to the Appeal Division may only be brought if leave to appeal is granted" while ss. 58(3) mandates that the Appeal Division must either "grant or refuse leave to appeal." Clearly, there is no automatic right of appeal. An Applicant must first seek and obtain leave to bring his or her appeal to the Appeal Division, which must either grant or refuse leave.

[7] 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".

ANALYSIS

[8] On an Application for Leave to Appeal the hurdle that an Applicant must meet is a first, and lower one than that which must be met on the hearing of the appeal on the merits. However, to be successful, the Applicant must make out some arguable case[1] or show some arguable ground upon which the proposed appeal might succeed.

[9] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

> c. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
>
> d. The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
>
> e. 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.

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

[11] In order to grant leave to appeal, the Tribunal is required to be satisfied that the appeal has a reasonable chance of success. This process requires the Tribunal to first determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal and then to go on to assess the chance of success of the appeal.

[12] The Tribunal is not satisfied that the appeal has a reasonable chance of success.

[13] The Applicant put forward the following as the reason for her appeal:

> "My diagnosis of chronic pain and depression is chronic and has failed to improve with expensive medication and other treatment modalities that I cannot afford. I believe that the Tribunal needs to heath (sic) my cry that a slight improvement in my condition with multiple and numerous medications that essentially turn me into a non-functional

[1] *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

> vegetable is not improvement at all. I cannot leave my house or work in this condition and would need a driver. Furthermore some of these treatments have caused a further deterioration of my health, for example new onset of Diabetess (sic). With all of the medications I feel anesthetized with no feelings, drunk, a "cloudy numbness" throughout my day. How is that any way to live. I rather be less active with pain, than to be slightly pain free in a drunk, cloudy and immobilized state. Please reconsider my request and show mercy in my behalf."

[14] The Tribunal finds that while the Applicant's reasons state her disagreement with the Review Tribunal decision, they do not disclose a ground of appeal. Specifically, they do not relate to the stated grounds of appeal. Beyond stating that her pain and depression is chronic, the Applicant has not shown how the Review Tribunal failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. Nor has the Applicant demonstrated how the Review Tribunal 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.

[15] For all of the above reasons the Tribunal is not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[16] The Application is refused.

Hazelyn Ross
Member, Appeal Division