

Citation: *H. S. v. Minister of Employment and Social Development*, 2014 SSTAD 330

Appeal No: AD-14-508

BETWEEN:

H. S.

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 13, 2014

DECISION

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

INTRODUCTION

On July 15, 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 18, 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 it.

[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] In support of the Application, the Applicant repeated the grounds of appeal set out in the DESD Act.

[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] To support his request for leave to appeal, the Applicant set out the grounds of appeal in section 58 of the DESD Act. He wrote that the General Division breached the principles of natural justice, made an error of fact and an error of law. He did not, however, provide any details regarding how the principles of natural justice were to have been breached, or how these errors were to have been made. Without this information, there is no factual basis to find that the Applicant has presented any ground of appeal that has a reasonable chance of success on appeal. Hence, I am not persuaded that the Applicant has presented any ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[11] The Application is refused for these reasons.

Valerie Hazlett Parker
Member, Appeal Division