Citation: *J. P. v. Minister of Employment and Social Development,* 2014 SSTAD 331

Appeal No: AD-14-515

BETWEEN:

J. P.

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

[2] On August 7, 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 23, 2014.

ISSUE

[3] The Tribunal must decide 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".

[5] 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.

[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".

SUBMISSIONS

[7] The Applicant submitted the following arguments to support the Application:

a) Current medical records were provided to the General Division, however, past medical records would establish that the Applicant had suffered with severe migraine headaches from the age of 22;

b) The Applicant provided a further medical report from her family physician;

c) The Applicant did not work on a casual basis from 2002 to 2008, and only worked for Operation Christmas Child for three weeks each year, not six weeks;

d) The Applicant's Husband was diagnosed with dementia in 2012, not 2009; and

e) The Applicant also suffered from anemia and received regular injections for this.

[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 Applicant has pointed to errors made in the General Division decision. These were that she did not work on a casual basis from 2002 to 2008, and the

date of her Husband's diagnosis with dementia. In order for these errors to form grounds of appeal that have a reasonable chance of success on appeal they must have been made in a perverse or capricious manner, or without regard to the material before the General Division. I find that the date of the Applicant's Husband's diagnosis was not material to the issue before the General Division. This error was not made in a perverse or capricious manner.

[12] The General Division decision considered all of the evidence, including the Applicant's entire work history. The Minimum Qualifying Period was long after the dates in question, and the Applicant worked after this time. Therefore, I find that the errors regarding her work from 2002 to 2008 and the amount of time she worked for Operation Christmas Child were not made without regard to all of the material before the General Division Member or in a perverse or capricious manner. These arguments are not grounds of appeal that have a reasonable chance of success on appeal.

[13] The Applicant also argued that the General Division did not have evidence regarding her historical medical conditions including migraine headaches and anemia. It is incumbent on parties seeking to obtain a CPP Disability pension to produce all relevant evidence to support their claim as they bear the legal burden of proof. The General Division made no error when it did not consider evidence that was not presented. The Tribunal has no obligation to seek out such evidence or to counsel a party on what evidence to produce at a hearing. Therefore, this argument also does not have a reasonable chance of success on appeal.

[14] Finally, the Applicant produced a letter from her family physician in support of the Application. Section 58 of the DESD Act sets out very narrow grounds of appeal that I can consider. The provision of new evidence is not one of these grounds. Therefore it does not have a reasonable chance of success on appeal.

[15] If the Applicant has filed this medical report in an effort to rescind or amend the decision of the General Division, she must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and she must also file an application to rescind or amend the decision with the General Division. Section 66 of the DESD Act

also requires an applicant to demonstrate that the proposed new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. The Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so.

CONCLUSION

[16] For these reasons the Application is refused.

Valerie Hazlett Parker
Member, Appeal Division