

Citation: *C. M. v. Minister of Employment and Social Development*, 2014 SSTAD 346

Appeal No. AD-13-167

BETWEEN:

C. M.

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: Janet Lew

DATE OF DECISION: November 27, 2014

INTRODUCTION

[1] The Applicant applies to the Social Security Tribunal for leave to appeal the decision of the Review Tribunal issued on April 25, 2013. The Review Tribunal dismissed his application for disability benefits under the *Canada Pension Plan*, on the basis that he was receiving CPP retirement benefits for more than 15 months prior to his application for disability benefits, and therefore did not qualify for disability benefits. The Review Tribunal also found that the Applicant was not incapacitated after he applied for retirement benefits. (Had the Review Tribunal found that the Applicant was incapacitated, this could have resulted in an earlier deemed date of application for disability benefits.)

[2] In order to succeed on this application for leave, the Applicant must show that the appeal has a reasonable chance of success.

SUBMISSIONS

[3] The Applicant seeks leave on the following grounds, that:

- (a) he had been driven to apply for retirement benefits out of despair and desperation,
- (b) he suffers from and has been dealing with an alcohol addition, and
- (c) the decision of the Review Tribunal has impaired his ability to live a “normal, respectable life”.

[4] The Respondent has not filed any submissions.

ANALYSIS

[5] 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, for leave to be granted, some arguable ground upon which the proposed appeal might succeed is required: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[6] Subsection 58(1) of the *Department of Employment and Social Development 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.

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

[8] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[9] The Review Tribunal had considered the Applicant's submissions set out in paragraphs 3(a) and 3(b), above. There is no suggestion by the Applicant that the Review Tribunal failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the Review Tribunal may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[10] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard and the Applicant has not satisfied me that the appeal has a reasonable chance of success.

[11] Impairment of quality of life is of no relevance to a leave application, as it does not address any of the enumerated grounds of appeal and does not point to any errors or failings on the part of the Review Tribunal. I am unable to consider the impact which the decision of the Review Tribunal may have had on the Applicant, given the narrow constraints and requirements of subsection 58(1) of the DESDA.

CONCLUSION

[12] The Application is refused.

Janet Lew

Member, Appeal Division