

Citation: *L. L. v. Minister of Employment and Social Development*, 2014 SSTAD 341

Appeal No: AD-14-532

BETWEEN:

L. 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 refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On August 11, 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 October 14, 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 the following arguments to support the Application:

- a) She repeated her biographical information and employment history;
- b) Her main medical condition is epilepsy, and she also suffers from depression and anxiety. All of her medical conditions are refractory to treatment;
- c) None of her medical conditions are compatible with being able to work; and
- d) The General Division decision trivialized a very serious medical condition

[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] In addition, 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] In this case, the Applicant put forward a number of arguments as grounds of appeal. First, she repeated her biographical data and her employment history including work as a cleaner, and managing her own cleaning business. The Applicant did not allege that the General Division decision made any error regarding these facts. The repetition of this information is not a ground of appeal that may have a reasonable chance of success on appeal.

[11] The Applicant also argued that her medical conditions are refractory to treatment. This argument does not allege that the General Division decision erred in law, in fact or breached any principle of natural justice. Therefore, this is not a ground of appeal that has a reasonable chance of success on appeal.

[12] In addition, the Applicant argued that none of her medical conditions were compatible with working. This is the very issue that was to be decided by the General Division. The Applicant did not argue that the General Division made any error in fact or in law in its decision on this issue, or that the General Division breached any of the principles of natural justice or acted without proper jurisdiction. Therefore, this is not a ground of appeal that has any reasonable chance of success under section 58 of the DESD Act.

[13] Finally, the Applicant argued that the General Division decision trivialized her serious medical condition. She provided no details on how this was to have occurred. Without such information, I am not satisfied that the General Division did so. In addition, this argument did not allege that the General Division made any error or breached a principle of natural justice or its jurisdiction, which are the only grounds of appeal set out in section 58 of the DESD Act. Hence this argument also has no reasonable chance of success on appeal.

CONCLUSION

[14] Despite the tragic nature of the facts of this case, leave to appeal is refused because the Applicant has not put forward any ground of appeal that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division