

Citation: *Minister of Employment and Social Development v. J. A.*, 2014 SSTAD 342

Appeal No: AD-14-536

BETWEEN:

**Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)**

Applicant

and

J. A.

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 grants leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On July 16, 2014, the General Division of the Social Security Tribunal (the “Tribunal”) determined that a Canada Pension Plan disability pension was payable commencing December 2010. 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”.

[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 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

[7] The Applicant did not contest the General Division conclusion that the Respondent was disabled. It disputed the date of onset of disability. The General Division decision found the Respondent to be disabled as of February 2010. The Applicant argued that the Respondent stopped work in December 2010 and suffered a stroke in April 2011. He became disabled as a result of this stroke.

[8] The Applicant also argued that the Respondent contributed to the *Canada Pension Plan* (CPP) in 2010, and a claimant cannot be both a contributor and a recipient of a CPP disability pension at the same time.

[9] The Respondent made no submissions.

ANALYSIS

[10] 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).

[11] 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.

[12] In this case, the Applicant did not dispute that the Respondent was disabled as that term is defined in the CPP. It argued that the General Division decision erred in law and in fact by finding the Respondent disabled prior to when he suffered a stroke in April 2011. The General Division decision concluded that the Respondent suffered the stroke in

December 2010, which was contrary to the evidence before it. This is an error that gives rise to a ground of appeal that has a reasonable chance of success on appeal.

[13] The Applicant also argued that a claimant cannot be both a contributor to the CPP and a recipient of a CPP disability pension. It relied on a decision of the Pension Appeals Board to support this argument (*Minister of Human Resources Development v. Childerhose* October 7, 1998, CP 04290). While this decision is not binding upon this Tribunal it may be persuasive, depending on what the evidence is in a particular case. I therefore find that this argument may also have a reasonable chance of success on appeal.

CONCLUSION

[14] The Application is granted for the reasons set out above.

[15] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division