

Citation: *S. G. v. Minister of Employment and Social Development*, 2014 SSTAD 335

Appeal No. AD-13-678

BETWEEN:

**S. G.**

Applicant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: November 17, 2014

## **DECISION**

[1] The Social Security Tribunal (the “Tribunal”) refuses leave to appeal.

## **BACKGROUND**

[2] The Applicant seeks leave to appeal the decision of the Review Tribunal, (“the Application”), denying her a disability pension under the *Canada Pension Plan*, (“CPP”). The Applicant claimed to have a severe and prolonged disability arising from her medical and mental health conditions. The Review Tribunal issued its decision on June 19, 2013.

## **GROUNDS OF THE APPLICATION**

- [3] On her behalf, the Applicant’s counsel submits that,
- a. The Review Tribunal based its decision on an erroneous finding of fact that it made without regard for the material before it; and
  - b. The Review Tribunal erred in law in making its decision.

## **ISSUE**

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

## **THE LAW**

[5] The applicable statutory provisions governing the grant of Leave are ss. 56(1), 58(1), 58(2) and 58(3) of the *Department of Employment and Social Development Act*, (“DESD Act”). Ss. 56(1) provides, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” while ss. 58(3) mandates that the Appeal Division must either “grant or refuse leave to appeal.” Clearly, there is no automatic right of appeal. An Applicant must first seek and obtain leave to bring his or her appeal to the Appeal Division, which must either grant or refuse leave.

[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”.

## **THE LAW (cont.)**

[7] On an Application for Leave to Appeal the hurdle that an Applicant must meet is a first, and lower one than that which must be met on the hearing of the appeal on the merits. However, to be successful, the Applicant must make out some arguable case<sup>1</sup> or show some arguable ground upon which the proposed appeal might succeed.

[8] 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.

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

[10] In order to grant the Application, the Tribunal is required to be satisfied that the appeal has a reasonable chance of success, however, this necessitates the Tribunal first determining whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal. Only then can the Tribunal assess the chance of success of the appeal.

[11] The Tribunal is not satisfied that the appeal has a reasonable chance of success.

## **ANALYSIS**

[12] Counsel for the Applicant submits that the Review Tribunal erred when it suggested at paragraph 24 of its decision that the Applicant's vision problems could be addressed with corrective lenses. Counsel submits that despite wearing corrective lenses, when the Applicant is either tired or has over-exerted herself she experiences problems with her vision.

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<sup>1</sup> *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[13] Counsel for the Applicant also submits that the Review Tribunal erred when it suggested at paragraph 24 of its decision that the Applicant maintains a “large, isolated farm property.” Counsel states that while the Applicant used to own such a property, her post- injury condition caused her to sell the farm.

[14] With respect to the Applicant’s use of corrective lenses, the Review Tribunal records the Applicant’s testimony as experiencing vision problems and slurred speech when tired.<sup>2</sup> At paragraph 17 of its decision, the Review Tribunal recorded the findings of Dr. P. Ranalli, a neurologist who, on October 24, 2011, found that the Applicant had two medical conditions: “(a) probable right fourth cranial nerve palsy, post-traumatic and (b) presbyopia, inadequately corrected, fully correctable (older bifocal glasses).” The Tribunal infers that in stating that the Applicant’s near-sightedness was fully correctable, Dr. Ranalli was describing the state of the Applicant’s eye health at the time he examined her. In linking the Applicant’s vision problems to Dr. Ranalli’s finding, the Review Tribunal may or may not have taken the effect of tiredness into consideration. However, the Tribunal is not satisfied that, in all the circumstances of the case, this error, if it is an error, would be sufficiently strong to undermine the integrity of the Review Tribunal decision, which appears to have turned on an entirely different issue.

[15] With respect to the question of where the Applicant lives, the Review Tribunal notes that it was the Applicant’s evidence that she “lived in an isolated location, out of town.”<sup>3</sup> Therefore, if the Review Tribunal misapprehended where the Applicant lives it did so on the basis of her testimony. Accordingly, the Tribunal finds no error on the part of the Review Tribunal.

[16] In stating the likely grounds of the appeal, Counsel for the Applicant raises two further, specific issues that she submits would form the basis of the appeal. First that the Review Tribunal failed to give proper weight to the December 2012 neuropsychological report, thereby erring in law. The Applicant’s counsel contends that the Review Tribunal gave more weight to the report of Dr. O’Brien than it did to the later report of Dr. Wang. In the view of Counsel for the Applicant, the Review Tribunal should have afforded much greater weight to Dr. Wang’s

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<sup>2</sup> Review Tribunal decision at para. 9.

<sup>3</sup> Review Tribunal decision at para. 9.

report because it resulted from an assessment that was performed three year later than Dr. O'Brien's and before the Applicant's Minimum Qualifying Period date of December 2012.

[17] The Tribunal is not persuaded of this view. In reading the Review Tribunal decision it is evident that the Review Tribunal considered both neuropsychological reports, noting the differences in their findings and conclusions. The Review Tribunal observed that the earlier O'Brien report was generally more positive in its prognosis concerning the Applicant while the later Wang report was not so positive. Ultimately, however, the Review Tribunal decision turned on the Applicant's failure to attempt alternate work. Therefore, the question of undue weight being given to the December 2009 O'Brien report is not, in the Tribunal's view, well-founded. Accordingly, the Tribunal rejects the submissions of the Applicant's Counsel concerning the weight the Review Tribunal ought to have given to Dr. Wang's 2012 report.

[18] The second issue that Counsel for the Applicant raises is that the Review Tribunal failed to properly consider the combined effect of all of the Applicant's medical conditions, particularly the Applicant's headaches, blurred vision and slurred speech. Counsel for the Applicant submits that the combined effect of the Applicant's medical conditions is to render the Applicant disabled within the meaning of the CPP. The Tribunal is not persuaded of Counsel's view.

[19] As recorded in the decision, the Review Tribunal noted that the later medical reports support that the Applicant continues to face challenges and continued to require support. However, the decision itself does not support the claims of the Applicant's Counsel. At paragraph 24, the Review Tribunal considers the Applicant's various medical conditions and writes,

[24] The vertigo does not seem to be disabling. She is on medication for it and only sees the doctor about it when it is very bad, which is infrequently. Her normal remedy is to sit. Her vision problems can be addressed with corrective glasses. She is able to perform her activities of daily living, albeit paces. She maintains a large, isolated farm property.

[20] The Review Tribunal then went on to discuss the Applicant's medical conditions in light of the neuropsychological assessment of Dr. O'Brien, the assessment by a speech pathologist on April 20, 2010 as well as the December 2012 neuropsychological assessment that was conducted by Dr. Wang. While Counsel for the Applicant and the Applicant may take a

different view of the evidence, the Tribunal is hard pressed to find where error resides in the Review Tribunal's treatment of the Applicant's medical conditions. The Tribunal finds that the Review Tribunal decision is sufficiently clear to allow it to understand how the decision was arrived at and, further, that in all of the circumstances of the case, was a decision the Review Tribunal could, reasonably, have come to. Therefore, for all of the above reasons, the Tribunal finds that the Applicant has not satisfied it that the appeal would have a reasonable chance of success.

## **CONCLUSION**

[21] The Application is refused.

*Hazelyn Ross*  
Member, Appeal Division