

Citation: *M. C. v. Minister of Employment and Social Development*, 2014 SSTAD 351

Appeal No: AD-14-559

BETWEEN:

M. C.

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: Hazelyn Ross

DATE OF DECISION: December 3, 2014

DECISION

[1] The Tribunal refuses leave to appeal.

BACKGROUND

[2] On June 1, 2011 the Respondent received the Applicant's application for a *Canada Pension Plan*, (CPP), disability pension. The Respondent denied the initial application and, on reconsideration, maintained the denial. The Applicant appealed to the Office of the Commissioner of Review Tribunals, the forerunner to the General Division of the Social Security Tribunal. The General Division held a video-conference hearing of the appeal on August 26, 2014 . The General Division Member denied the appeal, issuing her decision on September 4, 2014.

[3] In denying the appeal, the General Division Member found that the applicant had failed to demonstrate that she met the definition of severe and prolonged as of the minimum qualifying period, (MQP) date of December 31, 2008. The Applicant filed an Application for Leave to Appeal the General Division decision with the Tribunal's Appeal division, ("the Application").

GROUND OF THE APPLICATION

[4] The sole ground of the Application that the applicant advances is that she is appealing the decision on the instruction of her insurers.

THE LAW

What must the Applicant establish on an Application for Leave to Appeal?

[5] The applicable statutory provisions governing the grant of Leave are found in the department of Employment and Social Development Act, ("the DESD Act"). Ss. 56(1) makes it necessary for an Applicant to first obtain leave to appeal before bringing the appeal. Ss. 58(3) mandates that the Appeal Division must either "grant or refuse leave to appeal," while ss. 58(2) provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[6] In *St-Louis*¹, Mosley, J. stated that the test for granting a leave application was now well settled. Relying on *Calihoo*,² he reiterated that the test is “whether there is some arguable ground on which the appeal might succeed.” This test is seen as establishing that 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.

ISSUE

[7] Does the appeal have a reasonable chance of success?

ANALYSIS

[8] In deciding the issue the Tribunal is required to determine whether any of the Applicant’s reasons for appeal fall within any of the grounds of appeal and then to assess the possibility of success on appeal. Subsection 58(1) of the DESD Act states that the only grounds of appeal are that:

- 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] The Tribunal has examined the General Division decision and the reason for the Application in order to ascertain whether or not the General Division made any of the errors set out under the grounds of appeal. However the Tribunal has not been able to find any error on the part of the General Division. The Tribunal concludes that while it may well be that the Applicant’s insurers are dissatisfied with the decision of the General Division and have instructed her to appeal the decision, this dissatisfaction is not a ground of appeal, and cannot form the basis of an application for leave to appeal. Accordingly, the Tribunal is not satisfied that were it to grant the Application that the appeal would have a reasonable chance of success.

¹ *Canada (A.G.) V. St. Louis*, 2011 FC 492

² *Calihoo v. Canada (Attorney General)*, [2000] FCJ No. 612 TD para 15.

CONCLUSION

[10] The Application is refused.

Hazelyn Ross
Member, Appeal Division