

Citation: *P. M. v. Minister of Employment and Social Development*, 2014 SSTAD 377

Appeal No: AD-14-582

BETWEEN:

P. M.

Appellant

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: December 16, 2014

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal is granted.

INTRODUCTION

[2] The Applicant applied for a *Canada Pension Plan* disability pension based on her chronic pain condition. This application was denied by the Respondent at reconsideration in January 2013. She appealed to the General Division of this Tribunal on June 12, 2013 which was after the time to do so had expired. The General Division refused her application for an extension of time to appeal.

[3] The Applicant seeks leave to appeal from the General Division decision on the basis that she did not understand the timeline required to appeal, that she was not seen by a chronic pain specialist until after the time to appeal to the General Division had expired, that despite her compliance with all treatment recommendations her pain continues, and that the doctor who completed the medical form for her application erred in stating that she suffered from depression.

[4] The Respondent made no submissions with respect to the Application.

ISSUE AND ANALYSIS

[5] The Tribunal is only able to grant leave to appeal if the Applicant has presented a ground of appeal that has a reasonable chance of success on appeal. The grounds of appeal that I can consider are set out in section 58 of the *Department of Employment and Social Development Act* (DESD Act) (see Appendix for relevant sections).

[6] The Appellant argued that she was not aware of the timeline for appeal, did not receive a medical consultation in the time permitted to appeal, had complied with treatment recommendations, and that her physician erred in a medical report. These arguments do not point to any breach of natural justice or to any error made by the General Division in its decision. Therefore, they are not grounds of appeal that have a reasonable chance of success on appeal.

[7] The Appellant also presented new evidence to support the Application. This is not a ground of appeal that can be considered under section 58 of the DESD Act. If the Applicant has filed these medical reports in an effort to rescind or amend the decision of the General Division, she must file an application to rescind or amend the decision pursuant to section 66 of the DESD Act. There are additional requirements that an Applicant must meet to succeed in an application to rescind or amend a decision. Section 66 of the DESD Act also requires an applicant to demonstrate that the new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. She must also comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*. The Appeal Division has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so. Therefore the presentation of this new evidence is not a ground of appeal that has a reasonable chance of success.

[8] In the Application the Applicant did not allege that the General Division made any error of fact or in law. However, the decision was amended to change the date regarding the medical diagnosis from April 10, 2014 to April 10, 2013. This date is before the Minimum Qualifying Period, not after it, as described in the decision. This resulted in an error that may have a reasonable chance of success on appeal.

CONCLUSION

[9] The Application is granted as the Appellant there is an arguable case on appeal.

[10] 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

Appendix: Department of Employment and Social Development Act

58.(1) 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.

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success