Citation: *J. G. v. Minister of Employment and Social Development,* 2014 SSTAD 378

Appeal No: AD-14-591

BETWEEN:

J. G.

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: 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 on the basis of her mental illness. This was denied by the Respondent at the initial and reconsideration levels. The Applicant appealed to the General Division of this Tribunal which denied her appeal. She now seeks leave to appeal to the Appeal Division of this Tribunal, contending that the General Division erred by minimizing the medical evidence and concluding that her condition would improve and a return to work was possible.

[3] The Respondent made no submissions.

ISSUE AND ANALYSIS

[4] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also 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. v. Canada (Attorney General)*, 2010 FCA 63.

[5] Section 58 of the *Department of Employment and Social Development Act* sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (the legislation is set out in the Appendix to this decision).

[6] The Applicant submitted that the General Division erred by minimizing the medical evidence presented at the hearing. This argument asks this Tribunal to retry the evidence to reach a different conclusion than the General Division did. In *Gaudet v. Attorney General of Canada* 2013 FCA 254 the Federal Court of Appeal concluded that a reviewing tribunal

is not to retry the issues, but to assess whether the outcome was acceptable and defensible on the facts and the law. It is not for the Appeal Division of this Tribunal to reweigh the evidence that was before the General Division to reach a different decision. This argument is not a ground of appeal that has a reasonable chance of success on appeal.

[7] In addition, the General Division found that the Applicant's Minimum Qualifying Period for a *Canada Pension Plan* disability pension is December 31, 2014. The decision also stated that the issue before it was whether the Applicant was disabled by this date. This was an error as the hearing was held in March 2014. The General Division would be unable to determine whether the Applicant was disabled at a date in the future. Therefore, this error is also a ground of appeal that has a reasonable chance of success on appeal.

[8] In addition, the General Division decision stated that it preferred the evidence of the Department this matter. I must assume that it meant the Respondent. The Respondent did not present any medical evidence, only submissions on the medical evidence presented by the Applicant. I don't know what evidence the General Division could have preferred. The decision also did not explain why it preferred this evidence. In *R. v. Sheppard* 2002 SCC 26 the Supreme Court of Canada stated that reasons must be given for findings of facts made on disputed and contradicted evidence, and upon which the outcome of the case is largely dependent. This decision did not do this. I find that the General Division erred in law as it did not set out the evidentiary basis for the decision reached. This error is also a ground of appeal that has a reasonable chance of success on appeal.

[9] The Applicant also argued that the General Division erred when it concluded that her condition would improve with optimized treatment, and a return to work would be possible. The General Division decision did not explain how it reached this conclusion. For the same reason I am satisfied that this was an error that is a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is granted.

[11] 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