

Citation: *F. H. v. Minister of Employment and Social Development*, 2014 SSTAD 410

Appeal No. Ad-14-564

BETWEEN:

F. H.

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 31, 2014

DECISION

[1] The Tribunal refuses leave to appeal.

BACKGROUND

[2] On November 1, 2013, 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 "Tribunal"). The General Division heard the appeal by way of a combination of written questions and answers and an in-person hearing on March 4, 2014, which the Applicant did not attend.. The General Division Member denied the appeal.

[3] In denying the appeal, the General Division Member found that the Applicant had failed to demonstrate that he was incapable regularly of pursuing any substantially gainful occupation as of the minimum qualifying period, ("MQP"). 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] By way of an annotation inserted upon the medical report of Dr. Patrick Safieh that the Applicant's representative submitted with the Application, it is contended that the Applicant's medical condition is prolonged and continues after the MQP. The Applicant's representative has also submitted a copy of a Shoppers Drug Mart medication list in the name of S. H. (presumably the Applicant). This medication list is identified as Submission 2.

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 submissions provided by the Applicant’s representative 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. It goes without saying that the Applicant is dissatisfied with the decision of the General Division; however, he and his representative have not put forward any rational basis by which the General Division decision might be challenged.

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

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

[10] The Applicant has not identified any failure by the General Division to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction. He has not identified any errors in law which the General Division may have committed in making its decision. The Applicant has not identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[11] While at the leave stage an Applicant is not required to prove the grounds of appeal, the Application should set out some basis which falls into the enumerated grounds of appeal. It is not sufficient for an Applicant to attach a new medical report, obtained months after the hearing and to simply state that the disability is prolonged and continuous beyond the MQP. First the Application is not a “new facts” application, which could render Dr. Safieh’s medical report admissible as a material fact. Secondly, Dr. Safieh makes no clinical or other finding concerning the Applicant, who he examined for symptoms of depression, which condition was canvassed in the questions and answers the General Division Member put to the Applicant. Therefore, in terms of the current Application nothing turns on Dr. Safieh’s medical report.

[12] In like vein, the Tribunal finds that the Shoppers Drug Mart medication list does not assist the Applicant as the medication list does not point to how the General Division may have erred. Accordingly, the Tribunal finds that the Application is deficient in that it does not disclose how the General Division decision breaches any of the grounds of appeal. Therefore, in all the circumstances of this case, the Tribunal would refuse the Application.

CONCLUSION

[13] The Application is refused.

Hazelyn Ross

Member, Appeal Division