

Citation: *H. Q. v. Minister of Employment and Social Development*, 2015 SSTAD 6

Appeal No: AD-14-618

BETWEEN:

H. Q.

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: January 5, 2015

DECISION

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

INTRODUCTION

[2] The Appellant obtained three years of university education before moving to Canada from Vietnam. She had no work experience in Vietnam. In Canada she worked in a factory. She stopped working due to shoulder and arm pain that resulted from her work duties. The Appellant claimed that she was disabled under the *Canada Pension Plan* as a result of her physical limitations. Her application for a *Canada Pension Plan* (CPP) disability pension was denied by the Respondent initially and on reconsideration. She appealed to the General Division of this Tribunal, where her claim was dismissed.

[3] The Appellant now seeks leave to appeal to the Appeal Division of this Tribunal as she disagreed with the General Division decision. The Respondent made no submissions on this leave to appeal application.

ISSUE AND THE LAW

[4] The *Department of Employment and Social Development Act* provides that a claimant must obtain leave to appeal to the Appeal Division. Section 58 states:

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.

[5] Therefore, to be granted leave to appeal to the Appeal Division of the Tribunal, the Appellant must put forward at least one ground of appeal that falls within this legislation, and that has a reasonable chance of success on appeal.

ANALYSIS

[6] The Appellant based her application for leave to appeal on her disagreement with statements made in the General Division decision. First, the Appellant argued that her physical restrictions included functions of her right arm, shoulder and both hands. This was acknowledged in the General Division decision. This argument does not point to any error made by the General Division and thus is not a ground of appeal that has a reasonable chance of success on appeal.

[7] The Appellant also argued that the fact that she refused to undergo further treatment with cortisone injections is not, by itself, fatal to her claim for a *Canada Pension Plan* disability pension. This is correct. The General Division decision set out the treatment the Appellant underwent and what further treatment was recommended. It considered the refusal of cortisone injections along with the other facts presented at the hearing. This argument does not point to any error of fact made in a perverse or capricious manner, or that the decision was made without regard to the facts. It does not have a reasonable chance of success on appeal.

[8] The Appellant argued, further, that she would not be able to perform any sedentary work due to her limited English skills. The General Division outlined the testimony regarding the Appellant's English skills, and weighed this evidence in reaching its decision. No error was made in this regard. This ground of appeal does not have a reasonable chance of success on appeal.

[9] The Appellant also contended that she attempted light duties at her former employer, which she was not able to complete due to her physical restrictions. The General Division outlined the Appellant's attempt to return to work on light duties, and stated that she had made no other attempts to work or improve her English skills. Hence, this argument does

not point to any error made by the General Division, and so does not have a reasonable chance of success on appeal.

[10] Further, the Appellant argued that she did not have any transferrable skills due to her work experience only in factory work. This was considered by the General Division, along with her education in Vietnam, her age, and other factors. Again, this argument does not point to any error made by the General Division, so does not have a reasonable chance of success on appeal.

[11] Finally, the Appellant argued that there was no medical evidence that the Appellant had some capacity to complete substantially gainful work, and that the case law referred to in the General Division decision could be distinguished on this basis. This argument does not suggest that the General Division made any error in law or in fact, or breached a principle of natural justice. The case law referred to in the decision was relevant, and of assistance to explain the decision made. No error was made by referring to it. Therefore, the fact that this case was referred to was not a ground of appeal that has a reasonable chance of success on appeal.

[12] Also, it is for the claimant to produce medical and other evidence to support her claim. This Tribunal must make its decision based on the evidence presented. The fact that no medical report specifically stated whether the Appellant was capable of performing any substantially gainful occupation is not a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[13] As the Appellant has not presented any ground of appeal that has a reasonable chance of success, leave to appeal is refused.

Valerie Hazlett Parker
Member, Appeal Division