Citation: *Y. N. v. Minister of Employment and Social Development*, 2015 SSTAD 14

Appeal No: AD-14-615

BETWEEN:

Y. N.

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 6, 2015

DECISION

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

INTRODUCTION

[2] The Appellant claimed that she was disabled under the *Canada Pension Plan* as a result of workplace injury, depression, neck, shoulder and arm pain. Her claim was denied by the Respondent initially and after reconsideration. She appealed to the General Division of the Social Security Tribunal, where her claim was again dismissed.

[3] The Appellant seeks leave to appeal to the Appeal Division of the Tribunal on a number of grounds. The Appellant submitted that the General Division erred by speculating about her work in British Columbia, by stating that her family physician did not provide medical evidence after 2007 and that the doctor declined to state an opinion about her work capacity, the General Division didn't give sufficient consideration to some of the evidence, failed to apply the proper legal principles to the question before it, and failed to assess her capacity to work at the Minimum Qualifying Period.

[4] The Respondent made no submissions on this application.

THE LAW

[5] The *Department of Employment and Social Development Act* sets out very narrow grounds of appeal that may be considered. It also states that leave to appeal is not to be granted unless a ground of appeal has a reasonable chance of success (see Appendix to this decision). Therefore, I must determine whether any of the grounds of appeal put forward by the Appellant have a reasonable chance of success.

ANALYSIS

[6] The Appellant presented a number of arguments as grounds of appeal. First, she contended that the General Division failed to consider relevant evidence, misconstrued

evidence, neglected to analyze evidence and substituted its opinion for medical opinions. She provided no explanation regarding how any of this was to have occurred, or how it was an error contemplated by section 58 of the *Department of Employment and Social Development Act* (DESD Act). Hence, I am not satisfied that this is a ground of appeal that has a reasonable chance of success.

[7] The Appellant also argued that the General Division erred as it speculated about the nature of the Appellant's work in British Columbia without evidence to contradict the testimony given at the hearing. The General Division decision considered the Appellant's testimony about her work in British Columbia. It concluded that this was not credible, which was a finding of fact. It is for the General Division to make findings of fact based on the evidence heard. Therefore, this argument is not a ground of appeal that has a reasonable chance of success on appeal.

[8] The Appellant also argued that the General Division erred by not considering her capacity to work at the Minimum Qualifying Period of December 31, 2009. She stated that the work in British Columbia was prior to this date. Also, the fact that the Appellant was able to complete light duties with her former employer in 1999 was not relevant to her capacity to work in 2009, some ten years later. The General Division decision summarized all of the evidence that was presented at the hearing, including the evidence regarding her work ability and attempts at lighter duties. The Appellant did not work at the Minimum Qualifying Period; her last work was light duties at the factory in 1999, and the work in British Columbia. Therefore, I am satisfied that the General Division made no error in assessing of this evidence. If I am wrong, and an error was made in this regard, I am satisfied that it was not done in a perverse or capricious manner, or without regard to the evidence. Therefore, this argument does not have a reasonable chance of success on appeal.

[9] The Appellant also contended that the General Division erred in stating that there was no medical evidence after 2007. The decision did not state this. It referred to the report and notes of the family doctor after this date. Hence, no ground of appeal with a reasonable chance of success is disclosed by this argument.

[10] Further, the Appellant argued that the General Division did not give sufficient weight to her testimony regarding her medical issues, limitations and treatment. With this argument, she asked this Tribunal to reweigh the evidence that was before the General Division to reach a different conclusion. The Federal Court stated clearly in *Misek v. Canada (Attorney General)*, 2012 FC 890, that it is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision in question. This argument therefore does not have a reasonable chance of success on appeal.

[11] Similarly, the Appellant argued that the General Division failed to apply legal principles set out in various court decisions by not considering all of her personal characteristics including limited English skills and work experience, failing to consider all of her disabilities as a whole, and her attempt to work on light duties as a failed attempt to work because of her disabilities. These arguments, again, asked this Tribunal to reassess the evidence that was before the General Division to reach a different conclusion. For the same reason, I find that these arguments did not point to any error made by the Tribunal and do not have a reasonable chance of success on appeal.

[12] Further, the Appellant argued that she should not be required to look to find a benevolent employer to work for to qualify for a disability pension under the CPP. This argument did not point to any error made by the General Division, or to a breach of natural justice. Therefore, it does not have a reasonable chance of success on appeal.

[13] Finally, the Appellant argued that the General Division erred when it stated that the family physician declined to state an opinion about the Appellant's prognosis and ability to work. The medical report referred to stated that the Appellant's prognosis was "reserved". This is not the same as declining to state an opinion. In addition, the CPP does not require a physician's opinion that a claimant is unable to work due to disability. That is the decision that the General Division must make after weighing all of the evidence before it. I am satisfied that the General Division erred by concluding that the physician had declined to state an opinion when he wrote that the prognosis was "reserved" and placing weight on this in coming to its decision. This is an error that is a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[14] The Application is granted because the Appellant has presented a ground of appeal that has a reasonable chance of success on appeal.

[15] 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.