

Citation: *K. H. v. Minister of Employment and Social Development*, 2015 SSTAD 33

Appeal No: AD-14-622

BETWEEN:

K. 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: Valerie Hazlett Parker

DATE OF DECISION: January 8, 2015

DECISION

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

INTRODUCTION

[2] The Applicant claimed that she was disabled under the *Canada Pension Plan* as a result of a workplace shoulder injury that was treated with multiple surgeries and physiotherapy but has left her with chronic pain and limitations. The Respondent denied her claim initially and after reconsideration. She appealed to the Office of the Commissioner of Review Tribunals. This appeal was transferred to the General Division of the Social Security Tribunal on April 1, 2013. The Applicant's claim was dismissed by the General Division on October 24, 2014.

[3] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. She repeated her position that her disability was severe and prolonged, and continues despite medical intervention. She requested that the matter be reconsidered.

[4] The Respondent did not respond to this application.

ISSUE AND ANALYSIS

[5] 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.

[6] Section 58 of the *Department of Employment and Social Development Act* sets out the only grounds of appeal that may be considered to grant leave to appeal (the section is set out in the Appendix to this decision). Therefore I must decide whether the Applicant has put forward any ground of appeal that has a reasonable chance of success on appeal.

[7] The Applicant repeated her contention that her disability was severe and prolonged. She suffered an injury to her shoulder which has left her with chronic pain and limitations despite medical treatment. This evidence was before the General Division at the hearing and considered when it reached its decision in this matter. The repetition of this information does not point to any error of fact or in law made by the General Division, or that any of the principles of natural justice had been breached. While I am sympathetic to the Applicant's plight, she has not put forward any ground of appeal that can be considered pursuant to section 58 of the *Department of Employment and Social Development Act*.

[8] The Application is therefore refused.

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.