

Citation: *J. W. v. Minister of Employment and Social Development*, 2015 SSTAD 67

Appeal No: AD-13-22

BETWEEN:

**J. W.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: HAZELYN ROSS

DATE OF DECISION: January 16, 2015

## **DECISION**

[1] The application for leave to appeal is refused

## **INTRODUCTION**

[2] By a decision issued April 11, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant. The Applicant has filed an Application for Leave to Appeal the decision of the Review Tribunal, (the “Application”).

## **GROUND OF THE APPLICATION**

[3] The Applicant is self-represented. In her Application for Leave to Appeal, she submits that she had been physically and emotionally unprepared to attend the hearing before the Review Tribunal and she lists several conditions, including anemia, that she states were responsible for her physical and mental state and which affected her ability to attend the hearing.

[4] The Applicant also submitted copies of a lab report for blood work investigation into her anemia. The Applicant also states that a Richmond area Rheumatologist has recently diagnosed her with fibromyalgia and drug induced lupus.

## **ISSUE**

[5] The only issue for the Tribunal to decide is whether, without considering the merits of the application, the appeal has a reasonable chance of success.

## **THE APPLICABLE LAW**

[6] The relevant statutory provisions are found in ss. 56(1), 58(2) and 58(3) of the *Department of Employment and Social Development Act*, (the DESD Act). Ss. 56 (1) clarifies that there is no automatic right to an appeal. Thus, an Applicant must seek and obtain leave to bring his or her appeal before the Appeal Division. Ss.58 (3) of the DESD Act mandates that “the Appeal Division must either grant or refuse leave to appeal” while ss. 58 (2) sets out on what basis leave to appeal is refused. Leave will be refused where the Appeal Division is not satisfied that

the appeal has a reasonable chance of success. The jurisprudence establishes that the test for whether leave should be granted is whether there is an arguable case.<sup>1</sup> The Applicant must raise some arguable ground upon which the proposed appeal might succeed.<sup>2</sup> In *Carroll*, O'Reilly J<sup>3</sup> stated that an Applicant “will raise an arguable case if she ...raises an issue not considered by the Review Tribunal; or can point to an error in the Review Tribunal’s decision. Leave to Appeal will also be granted where a breach of natural justice is established.”<sup>4</sup>

## **ANALYSIS**

[7] In its decision the Review Tribunal considered the medical evidence that the Applicant submitted to support her claim that she suffers from a severe and prolonged disability within the meaning of paragraph 42 (2)(a) of the *Canada Pension Plan*. In the Application, the Applicant points to no error in the Review Tribunal’s decision nor does she raise an issue that was not considered by the Review Tribunal. What she does do is to put forward new medical evidence in the form of a laboratory report for various blood tests performed on or about April and June 2013 to support her explanation for her failure to attend the hearing.

[8] The hearing before the Review Tribunal took place in the absence of the Applicant. The Applicant takes issue with this fact. She seeks to excuse her absence by pointing to several illnesses that she suffered sometime prior to the hearing date. She did not request an adjournment of the hearing, which she could have done and as was noted by the Review Tribunal, she had been provided with all the relevant materials. Moreover, the Applicant was aware that the Review Tribunal could proceed to a decision in her absence. The Tribunal finds that the Applicant had full opportunity to present her case to the Review Tribunal. The Tribunal also that the Applicant had full disclosure of all of the materials on file in her appeal. In light of these findings, the Tribunal finds that no issue of natural justice arises from the fact that the Review Tribunal held the hearing without the Applicant being present.

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<sup>1</sup> *Calihoo v. Canada (Attorney General)*, [2000] FCJ No. 612 TD at para. 15.

<sup>2</sup> *Canada (Attorney General) v. Zakaria*, 2011 FC 136 at para. 37.

<sup>3</sup> *Canada (Attorney General) v. Carroll*, 2011 FC 1092.

<sup>4</sup> *Calihoo v. Canada (Attorney General)*, [2000] FCJ No. 612 TD at para. 15.

[9] Accordingly, the Tribunal finds that the Application does not meet the test for granting leave. Specifically, the Application does not raise an issue that was not considered by the Review Tribunal nor does it point to an error of law on the part of the Review Tribunal. Therefore, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

## **CONCLUSION**

[10] The Application for Leave to Appeal is refused.

*Hazelyn Ross*

Member, Appeal Division