

Citation: *P. P. v. Minister of Employment and Social Development*, 2015 SSTAD 92

Appeal No: AD-14-621

BETWEEN:

**P. P.**

Applicant

and

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

Respondent

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

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SOCIAL SECURITY TRIBUNAL MEMBER: Valerie Hazlett Parker

DATE OF DECISION: January 22, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] The Applicant applied for a *Canada Pension Plan* disability pension. She claimed that she was disabled by arm, shoulder and neck pain which resulted from a workplace injury. The Appellant also suffered from scoliosis. Subsequently she was diagnosed and treated for breast cancer. She also suffered from fibroids which she asserted did not affect her lifestyle. The Respondent denied her claim initially and after reconsideration. The Appellant appealed to the Office of the Commissioner of Review Tribunals. The matter was transferred to the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*.

[3] The General Division of the Social Security Tribunal scheduled a videoconference hearing for this matter. The Appellant notified the General Division that she would not attend the hearing, and the Respondent also did not attend. The General Division made its decision based on the written materials filed by the parties.

[4] The Applicant now seeks leave to appeal that decision, citing factual errors made by the General Division in its decision. The Respondent made no submissions on this application.

## **ANALYSIS**

[5] The *Department of Employment and Social Development Act* governs the operation of the Social Security Tribunal. Section 58 provides as follows:

(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.

Therefore, I must decide if the Applicant has presented a ground of appeal that has a reasonable chance of success in order to grant leave to appeal.

[6] In this case, the Applicant corrected factual errors made in the General Division decision. These were:

- a) The Applicant was born in 1988, not 1957;
- b) The Applicant obtained a diploma in hairdressing after completing high school;
- c) The Applicant stopped working in a plastics factory in December 2008, not September 2007;
- d) The Applicant did not leave her job, she was laid off. After being laid off the company was sold and she was advised that she could return to work there only if she could perform regular duties. She was not able to do this due to pain in her arm, shoulder and back; and
- e) The Applicant attended at the hospital regarding her shoulder pain and was told that it was strained.

[7] In order for any of these factual errors to be a ground of appeal that has a reasonable chance of success, the Applicant must establish that the General Division based its decision on the erroneous finding of fact made in a perverse or capricious manner, or without regard to the material before it. The Applicant did not allege that the these errors were made in a perverse or capricious manner, that the General Division made its decision without regard to the information before it, or that the errors had a significant impact on the conclusion reached by the General Division. There was no other evidence from which I can conclude

that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner, or without regard to the material before it. Hence, there is no basis on which I can conclude that any of these factual errors raise a ground of appeal that has a reasonable chance of success on appeal.

## **CONCLUSION**

[8] The Application is therefore refused.

*Valerie Hazlett Parker*  
Member, Appeal Division