

Citation: *L. S. v. Minister of Employment and Social Development*, 2015 SSTAD 94

Appeal No: AD-15-18

BETWEEN:

L. S.

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 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, and claimed that he was disabled due to diverticulitis attacks, kidney stones and difficulty breathing due to sarcoidosis. The Respondent denied his claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. It set two in-person hearing dates. Both were adjourned as the Applicant had not received the results of an application for a division of unadjusted pensionable earnings. This matter was then 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 decided the Applicant's appeal on the basis of the written record after giving both parties the opportunity to file documents to support their position. On November 7, 2014 the General Division dismissed the Applicant's appeal. The Applicant sought leave to appeal from this decision. He argued that he did was not able to present his case impartially and was not treated fairly. In addition, he argued that his was incapable of holding a full-time or part-time job, and the medical evidence stated that his condition would not improve, but only worsen.

[4] The Respondent did file any submissions.

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 from a decision of the General Division (see the Appendix to this decision).

[7] The Applicant presented a number of arguments to support the application for leave to appeal. First, he argued that he had a reasonable chance of success because he was not able to hold a full-time or part-time job and his medical reports also stated that his condition would not improve, but only worsen. The General Division decision summarized all of the medical information and testimony. This information was considered by the General Division when it made its decision. The Applicant did not allege that the General Division made any error with respect to these facts. Therefore, this is not a ground of appeal that has a reasonable chance of success.

[8] The Applicant also argued that he did not get his “day in the tribunal” as hearings were postponed for procedural reasons. On two occasions the Office of the Commissioner of Review Tribunals postponed the hearing in this matter to allow for information regarding a division of unadjusted pensionable earnings to be made available. It is unfortunate that no further hearing date was scheduled prior to this matter being transferred to the Social Security Tribunal. The fact that this did not occur is not, however, a ground of appeal under section 58 of the *Department of Employment and Social Development Act* (DESD Act).

[9] In addition, the *Social Security Tribunal Regulations* permit hearings to be conducted in a number of different ways including in person, by videoconference, teleconference or in writing. The parties in this matter were notified that the matter would be decided based on the written record. They were given the opportunity to file documents to support their claim prior to the decision being rendered. The Applicant did not object to proceeding in this fashion. I am not satisfied that the General Division made an error in fact or in law, or breached any of the principles of natural justice by deciding this matter on the written record.

[10] The Applicant also alleged that he was treated unfairly. He did not provide any explanation of how this was to have occurred. Without this, I am not persuaded that the

Applicant was treated unfairly or that the General Division conducted itself improperly. This ground of appeal does not have a reasonable chance of success on appeal.

[11] Finally, the Applicant contended that he was not able to present his case impartially as he had support from the Respondent until the matter was transferred to this Tribunal.

Upon review of the material before the General Division it appears that the Respondent, at one time, was prepared to settle this matter with the Applicant, but changed its position after further investigation which disclosed that the division of unadjusted pensionable earnings did not benefit the Applicant. The investigation occurred after the Tribunal took carriage of this case. While this was an unfortunate turn of events for the Applicant, it does not establish a ground of appeal that has a reasonable chance of success on appeal. The fact that the Respondent changed its position with respect to settlement of the matter after an investigation does not point to any error in law or in fact, or any breach of the principles of natural justice by the General Division. Therefore, this argument does not have a reasonable chance of success on appeal.

CONCLUSION

[12] The Application is refused as the Applicant has not presented any ground of appeal that has a reasonable chance of success on appeal.

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.