

Citation: *K. H. v. Minister of Employment and Social Development*, 2015 SSTAD 106

Appeal No: AD-15-35

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 29, 2015

DECISION

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

INTRODUCTION

[2] The Applicant applied for a *Canada Pension Plan* disability pension and claimed that she was disabled by mental illness. The Respondent denied her claim initially and after reconsideration. She appealed to the Office of the Commissioner of Review Tribunals. The matter was transferred to the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division of the Social Security Tribunal dismissed the appeal on October 22, 2014.

[3] The Applicant requested leave to appeal from the General Division decision. She argued that 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 as it did not consider contradictory medical opinions when making its decision.

[4] The Respondent filed no 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] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the *Act* sets out the only grounds of appeal that may be considered to grant leave to appeal a decision of the General Division (the section is set out

in the Appendix to this decision). Therefore, I must decide whether the Applicant has put forward a ground of appeal that has a reasonable chance of success on appeal.

[7] The Applicant asserted that leave to appeal should be granted as the General Division erred in fact by not considering medical reports, penned prior to the Minimum Qualifying Period, which supported the Applicant's claim that she was disabled by her mental illness. In *R. v. Sheppard* 2002 SCC 26 the Supreme Court of Canada considered the decision maker's duty to provide sufficient reasons for a decision. It concluded that reasons must be given for findings of fact made upon disputed and contradicted evidence, and upon which the outcome of the case is largely dependent. In this case, various medical professionals reached different conclusions about the Applicant's capacities at different times. The outcome of the case was dependent, at least in part, on how this evidence was weighed. The General Division decision did not give any explanation for discounting reports that concluded that the Applicant could not work. This indicates that the General Division may have based its decision on an erroneous finding of fact made in a perverse or capricious manner, or without regard to the material before it. Therefore, this ground of appeal has a reasonable chance of success on appeal.

CONCLUSION

[8] The Application is granted for these reasons.

[9] 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.