Citation: *A. L. v. Minister of Employment and Social Development,* 2015 SSTAD 242

Appeal No. AD-14-563

BETWEEN:

A. L.

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: Hazelyn Ross

DATE OF DECISION: February 23, 2015

DECISION

[1] The Tribunal refuses leave to appeal.

BACKGROUND

[2] This is an Application for Leave to Appeal from the decision of the General Division of the Social Security Tribunal, (the Tribunal), issued on October 24, 2014, that denied the Applicant a *Canada Pension Plan*, (CPP), disability pension.

GROUNDS OF THE APPLICATION

[3] In denying the appeal, the General Division Member found that the Applicant had not met his onus to establish that, on or before December 31, 1997, his minimum qualifying period date, (the MQP), he had a severe and prolonged disability.

[4] The Applicant disagrees with the General Divisions conclusions. He states that he is disabled and that both Service Ontario and the Ontario Workers Safety and Insurance Board have recognised that he is disabled. He frames his objections in the following terms:

> "I do not agree with your decision. I feel I do qualify for a pension from CPP. I am on a pension from WSIB since 1992. I have a parking permit from Service Ontario.'

THE LAW

What must the Applicant establish on an Application for Leave to Appeal?

[5] The applicable statutory provisions governing the grant of Leave are found in the *Department of Employment and Social Development Act,* (the DESD Act). Ss. 56(1) makes it necessary for an Applicant to first obtain leave to appeal before bringing the appeal. Ss. 58(3) mandates that the Appeal Division must either "grant or refuse leave to appeal," while ss. 58(2) provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[6] It is well settled that the test for the grant of leave, is "whether there is some arguable ground on which the appeal might succeed." This test is taken as establishing that on an Application for Leave to Appeal the hurdle that an Applicant must meet is a first and lower one than that which must be met on the hearing of the appeal on the merits.

ISSUE

[7] The Tribunal must decide whether the appeal has a reasonable chance of success?

ANALYSIS

[8] In deciding the issue the Tribunal is required to determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal and then to assess the possibility of success on appeal. Subsection 58(1) of the DESD Act states that 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.

[9] The Tribunal has examined both the General Division decision and the Applicant's application with a view to deciding whether or not the General Division made any of the errors set out under the grounds of appeal. However the Tribunal has not been able to find any error on the part of the General Division. Clearly, the Applicant is dissatisfied with the decision of the General Division; however, he has not put forward any rational basis by which the General Division decision might be challenged.

[10] The Applicant has not identified any failure by the General Division to observe a principle of natural justice; nor has he shown how the General Division might have acted beyond or refused to exercise its jurisdiction. Further the Applicant has not identified any errors in law which the General Division may have committed in making its decision.

Likewise, the Applicant has not identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[11] While at the leave stage an Applicant is not required to prove the grounds of appeal, the Application should set out some basis that falls into an enumerated ground of appeal. It is not sufficient for an Applicant simply to state that he or she disagrees with the decision. Neither is it sufficient for an Applicant to allege that because other agencies recognize him as being disabled he, therefore, qualifies for a CPP disability pension. In *Halvorsen*[1] the Federal Court of Appeal clarified the position with respect to other disability plans. The question before the Federal Court of Appeal was whether the Pension Appeals Board erred when it based its decision on a finding by the Ontario Workers' Compensation Board that the applicant's back problems were not compensable because they were not work related.

[12] Addressing this issue at paragraph 4 of its decision, the Federal Court of Appeal found that, "Whether or not the applicant's back problems were compensable under the relevant Ontario legislation was of no relevance to the issue before the Board, since the Canada Pension Plan does not make it a condition that the disability be work-related."

[13] What follows from the decision is that it is the difference in the objectives of the various legislations that is key. Thus, the fact that the WSIB has been compensating the Applicant since 1992 is not relevant to the determination of whether or not he qualifies for a CPP disability pension. Nor is it relevant that Service Ontario has issued a disability permit to him. These issues are not relevant because of the particular criteria that are applied to a determination of disability under the CPP.

[14] The Tribunal accepts that the Applicant disagrees with the General Division decision, however, on the basis of the above analysis, the Applicant has failed to demonstrate to the Tribunal how the General Division may have erred, and how the decision breaches any of the grounds of appeal. Ultimately, the Applicant has failed to satisfy the Tribunal that the appeal would have a reasonable chance of success.

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[1] *Halvorsen v. Canada 2004 FCA 377.*

CONCLUSION

[15] The Application is refused.

Hazelyn Ross
Member, Appeal Division