

Citation: *P. F. v. Minister of Employment and Social Development*, 2015 SSTAD 375

Appeal No. AD-15-51

BETWEEN:

P. F.

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: March 19, 2015

DECISION

[1] The Social Security Tribunal (“the Tribunal”), refuses Leave to Appeal.

BACKGROUND

[2] On November 03, 2014, the General Division of the Social Security Tribunal issued its decision in which it denied the Applicant a disability pension under the *Canada Pension Plan* (“CPP”). On February 05, 2015, the Tribunal received a completed Application for Leave to Appeal the General Division decision (“the Application”).

GROUNDS OF THE APPLICATION

[3] The Applicant alleges that in his decision, the General Division Member breached the entirety of ss. 58(1) of the *Department of Employment and Social Development* (“DESD”) Act. On her behalf, Counsel for the Applicant alleges that the Tribunal,

- a. made errors in assessing the medical evidence; which evidence was more supportive of the Applicant than the Tribunal acknowledged in its decision;
- b. erred in failing to attach significant weight to the Applicant’s oral evidence concerning the impact of her medical conditions; and
- c. erred in its conclusion that the Applicant's condition did not meet the definition of severe and prolonged.

ISSUE

[4] In order to grant the Application, the Tribunal must decide whether or not the appeal has a reasonable chance of success.

THE LAW

[5] The applicable statutory provisions governing the granting of Leave are found at ss. 56(1), 58(1), 58(2) and 58(3) of the DESD Act. Ss. 56(1) provides that an Applicant must first seek and obtain leave to bring his or her appeal to the Tribunal’s Appeal Division which, following ss. 58(3), must either grant or refuse leave appeal.

[6] The grounds of appeal are set out at ss. 58(1) 58(2) and 58(3) and states that the only grounds of appeal are the following:

- 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.

ANALYSIS

[7] In order to grant leave to appeal, the Tribunal is required to be satisfied that the appeal would have a reasonable chance of success. This means that the Tribunal must first determine whether any of the Applicant's reasons for the Application fall within any of the grounds of appeal. It is only after this determination that the Tribunal can assess the chance of success of the appeal.

[8] For the reasons set out below the Tribunal is not satisfied that the appeal has a reasonable chance of success. Counsel for the Applicant has alleged that the General Division Member failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. However, Counsel for the Applicant has failed to set out in what manner the alleged breach occurred. The only statements that the Tribunal is able to interpret as relating to an alleged breach of natural justice is Counsel's statement at paragraph 33 of her submissions that the Tribunal relied on case law that was never brought forward by either parties or raised at the hearing.

[9] The Tribunal has examined Counsel's submissions and compared the case law on which she relies to that cited by the General Division Member. There are two instances where the General Division Member cites and relies on case law other than that brought forward by Counsel for the Applicant. On the point that Applicants for CPP disability payments are obligated to show serious efforts to help themselves, the General Division Member cites and relies on *A. P. v. MHRSD* (December 15, 2009) CP 26308 (PAB). Counsel raised this point in her submissions on disability, citing and relying on her own case law. It should be noted that for the most part, Counsel's submissions merely cite a principle of CPP law and then lists a number of cases that exemplify that principle and included submissions on issues that were not before the General Division. Therefore, in these circumstances, it is difficult to see how a

breach of natural justice was occasioned by the General Division Member's use of a different case that makes the same points as those submitted by Counsel for the Applicant.

[10] Similarly, the Tribunal finds that the General Division Member's use of a different case, namely, *Smith v. MHRD* (December 15, 2009) CP 26308 (PAB) when discussing the obligation to follow treatment recommendations does not constitute a breach of natural justice.

[11] Counsel for the Applicant also argues that the General Division erred in law, whether or not the error appears on the face of the record. Again, in the Application, Counsel for the Applicant has not pointed to any specific error of law except, perhaps, to state that the General Division Member erred in its assessment of the medical evidence and the weight it gave to the Applicant's oral testimony. The objection is, in reality, an objection to the weight the General Division Member gave to the various portions of the evidence. This Tribunal accepts that it is not the function of a Tribunal to "rubber stamp" medical opinions. This Tribunal also accepts that medical opinions must be weighed against oral testimony.¹ However, the issue of what weight is to be given to evidence remains within the purview of the Tribunal hearing the matter.

[12] Clearly, the General Division Member based his decision primarily on the Applicant's failure to follow recommended treatment. The General Division Member found that the Applicant had failed to take the recommended dosage of CipraleX. CipraleX had been prescribed for the Applicant's depression and anxiety. The General Division Member records that the Applicant testified that she was taking ½ dosage of CipraleX. However, in his medical report, Dr. Fiorini stated that the Applicant discontinued taking CipraleX after the initial prescription was finished. This statement was confirmed by Dr. Rathaur who contacted the Applicant's pharmacy. In addition, Dr. Hannick reported that the Applicant had refused his offer of psychiatric help. Therefore, notwithstanding that the General Division Member did not question the Applicant's credibility, in the face of clear statements that she did not follow treatment recommendations, the Tribunal finds that it was open to the General Division Member to find that the Applicant had failed to follow treatment recommendations for her mental health conditions. Accordingly, the Tribunal finds no error in the General Division Member's treatment of the medical documents and the Applicant's oral testimony.

¹ *Morley v. MEI* (November 1995) CP 3296; CEB & PG 8592.

[13] Counsel for the Applicant also contends that the General Division Member erred in concluding that the Applicant's condition did not meet the definition of severe and prolonged. In addition to finding that the Applicant failed to follow treatment recommendations the General Division Member found she had failed to pursue steps to find alternative employment. Counsel for the Applicant argues that the Applicant's medical conditions preclude her engaging in any substantially gainful employment, or any employment. However, in light of the finding of the General Division Member that the Applicant had failed to take treatment that would address her mental health conditions, which conditions impacted her ability to work, as well as the objective evidence of the Applicant's lack of effort at finding employment, the Tribunal is satisfied that the General Division Member did not err.

[14] In light of the foregoing, the Tribunal is not satisfied that on the facts that were before the General Division, the appeal would have a reasonable chance of success.

CONCLUSION

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

Hazelyn Ross

Member, Appeal Division