

Citation: *S. G. v. Minister of Employment and Social Development*, 2015 SSTAD 363

Appeal No: AD-15-108

BETWEEN:

**S. G.**

Appellant

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: March 18, 2015

## **DECISION**

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

## **INTRODUCTION**

[2] The Appellant applied for a *Canada Pension Plan* disability pension. She claimed that she was disabled as a result of a shoulder injury suffered at work. She later began to suffer from depression and had other physical limitations. The Respondent denied her claim initially and after reconsideration. The Appellant appealed to the Office of the Commissioner of Review Tribunals. Pursuant to the *Jobs, Growth and Long-term Prosperity Act*, the matter was transferred to the General Division of the Social Security Tribunal on April 1, 2013. The General Division held a teleconference hearing and on February 7, 2015 denied the Appellant's appeal.

[3] The Appellant sought leave to appeal to the Appeal Division of the Social Security Tribunal. She argued that leave to appeal should be granted because the General Division failed to take into account that she had very limited use of her shoulder, and that she has learning limitations. Finally, she contended that although she was able to complete modified work after her injury, she would not be able to do so at the time of the hearing.

[4] The Respondent filed no submissions.

## **ANALYSIS**

[5] Decisions of the courts are clear that 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. 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 from a decision of the General Division (the section is set out in the Appendix to this decision). The Appellant argued that the General Division did not consider her shoulder use restrictions or her academic limitations. The General Division decision analyzed the evidence presented on these matters. In *Simpson v. Canada (Attorney General)*, 2012 FCA 82. The Federal Court of Appeal stated that assigning weight to evidence, whether oral or written, is the job of the trier of fact, which is the General Division. A Member hearing an application for leave to appeal may not substitute their view of the evidence for that of the trier of fact. That is what the Appellant asked this Tribunal to do with this argument.

[7] In addition, this argument does not point to any error of fact made in a perverse or capricious manner, or without regard to the information that was before the General Division. Therefore, this argument does not disclose any ground of appeal that has a reasonable chance of success on appeal.

[8] The Appellant also contended that although she was able to complete modified work duties after her shoulder injury, she would not be able to do so at the time of the hearing. That may be so, however, the task before the General Division was to determine whether the Appellant suffered from a severe and prolonged disability at the Minimum Qualifying Period and thereafter, not at the time of the General Division hearing. This argument does not point to any error made by the General Division or to any breach of the principles of natural justice. It is not a ground of appeal that has a reasonable chance of success on appeal.

## **CONCLUSION**

[9] The Application is refused as the Appellant has not presented a 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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.