

Citation: *D. L. v. Minister of Human Resources and Skills Development*, 2015 SSTAD 378

Appeal No: AD-13-768

BETWEEN:

D. L.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: March 20, 2015

DECISION

[1] The Applicant seeks leave to appeal the decision of the Review Tribunal issued on March 13, 2013. The Review Tribunal dismissed her application for disability benefits under the *Canada Pension Plan*, as it found that her disability was not “severe” at the time of her minimum qualifying period of December 31, 2012.

[2] The Applicant takes the position that the Review Tribunal erred in assessing whether her disability is severe. The Applicant states that the overwhelming evidence before the Review Tribunal supported a finding of severe disability. To succeed on this application, the Applicant must show that the appeal has a reasonable chance of success.

[3] While certain documents in the record are in the French language, the Review Tribunal decision is in English, the Applicant filed the Application for Leave to Appeal (Application) in English and she has corresponded to the Social Security Tribunal (SST) in English. For these reasons, this decision is written in English.

SUBMISSIONS

[4] The Applicant seeks leave on the following grounds:

- a) Dr. Langlois’ statements about the Applicant being incapable of returning to work were not given sufficient consideration;
- b) she was not given an opportunity to explain why she found it difficult to return to physiotherapy;
- c) she has panic attacks and a high level of stress, along with physical consequences from them, and cannot work with the public;
- d) she may have cut back on her arguments because the Review Tribunal told her that she did not have to ‘rehash’ her medical history;
- e) she had a recent bout of severe, debilitating pain;

- f) she feels that there is a negative view against people who have back problems or anxiety and a prejudice towards mental disabilities;
- g) she feels that her case was not assessed on a unique basis but as a stereo-type; and
- h) her disability insurer asked her to appeal the Review Tribunal decision.

[5] The Respondent has not filed any submissions.

THE LAW

[6] Although a leave to appeal application is a first and lower hurdle to meet than the one that must be met on the hearing of the appeal on the merits, for leave to be granted, some arguable ground upon which the proposed appeal might succeed is required: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, the Federal Court of Appeal found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success.

[7] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) 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.

[8] For our purposes, a decision of the Review Tribunal is considered to be a decision of the General Division.

ANALYSIS

[9] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[10] The grounds relied upon by the Applicant fall into three categories: (1) the evidence before the Review Tribunal supported a finding of severe disability contrary to the decision made - [4] a), c) and e); (2) the Review Tribunal did not give her an opportunity to present all her evidence and/or was prejudiced against her case - [4] b), d), f), and g); and (3) her disability insurer has required her to appeal the decision - [4] f).

[11] In respect of category (1), the Review Tribunal considered the Applicant's evidence and submissions as they related to the medical reports of Dr. Langlois and the Applicant's testimony about her current symptoms and the treatments she had received and referred to these arguments in its decision at pages 3, 4, 5 and 6.

[12] The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the Review Tribunal may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[13] Category (3) of the Applicant's grounds does not fall within one of the enumerated grounds of appeal.

[14] The grounds in category (2) suggest that the Review Tribunal failed to observe a principle of natural justice, although the Applicant does not mention subsection 58(1)(a) of the DESD Act or refer to "natural justice" specifically. The Applicant submits that she was not given a sufficient opportunity to be heard and that the Review Tribunal was prejudiced against her case.

[15] This is not an assessment of the merits of the appeal. So, for the purposes of the Application, I do not need pronounce on whether the Review Tribunal provided the parties with a fair hearing. I am satisfied, based on the Applicant's submissions, that there is an issue as to whether a fair hearing was accorded to the Applicant.

[16] This raises a ground upon which the appeal might have a reasonable chance of success and, as such, I allow the application for leave to appeal.

CONCLUSION

[17] For the reasons stated above, the Application is granted.

[18] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[19] I invite the parties to make written submissions on the mode of hearing and whether one is appropriate and, also, on the merits of the appeal.

Shu-Tai Cheng

Member, Appeal Division