

Citation: *J. S. v. Minister of Employment and Social Development*, 2015 SSTAD 374

Appeal No: AD-15-37

BETWEEN:

**J. S.**

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: Janet Lew

DATE OF DECISION: March 19, 2015

## **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division dated November 8, 2014. The General Division determined that the Applicant was not eligible for disability benefits under the *Canada Pension Plan*, as it found that he did not have a severe disability at the time of his minimum qualifying period of December 31, 2009. To succeed on this application, the Applicant must show that the appeal has a reasonable chance of success.

## **ISSUE**

[2] Does this appeal have a reasonable chance of success?

## **SUBMISSIONS**

[3] The Applicant has not cited any errors with the decision of the General Division. The Applicant's submissions are as follows:

- There is a misunderstanding regarding his reported last day worked. He was laid off from his employment due to ill health and poor performance in May 2009. He explained that he reported July 2010 as his last day of work, as he mistakenly thought that he was being asked to provide the date of when he last received employment insurance benefits.
- Although he felt symptomatic in 2008 and 2009, he was still capable of working, so his brother encouraged him to work. He states that he would have been suicidal, but for his brother's intervention.
- He regularly sees his physician and reports his symptoms to him. His physician overlooked reporting some of the Applicant's symptoms, such as chest pain and shortness of breath. He cannot account for why his physician neglected to report that he had an angioplasty done and three stents inserted. The Applicant submits that there is sufficient medical evidence to prove that his disability is severe and prolonged. He has various medical conditions and experiences numerous

restrictions and limitations. He also receives assistance for all of his daily chores. He continues to undergo treatment and is going to be seeing a psychiatrist.

- He does not have any other sources of income, other than Canada Pension Plan retirement benefits. He claims that he would not have applied for CPP retirement benefits, had he been aware that it could potentially disentitle him to CPP disability benefits.

[4] The Respondent has not filed any written submissions.

## **ANALYSIS**

[5] 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, some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *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.

[6] Subsection 58(1) of the 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.

[7] I am required to determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal and whether any of them have a reasonable chance of success.

[8] There is no suggestion by the Applicant that the Review Tribunal failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. 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. The Applicant has not cited any of the enumerated grounds of appeal.

[9] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some reasons which fall into the enumerated grounds of appeal. The Application is deficient in this regard and the Applicant has not satisfied me that the appeal has a reasonable chance of success.

[10] Finally, impecuniosity is of no relevance to a leave application, as it does not address any of the enumerated grounds of appeal and does not point to any errors or failings on the part of the Review Tribunal. I am unable to consider the Applicant's limited financial means, or the fact that he receives a nominal amount in Canada Pension Plan retirement benefits.

## **CONCLUSION**

[11] As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, I am unable to find that the appeal has a reasonable chance of success and I therefore refuse the Application for leave.

*Janet Lew*

Member, Appeal Division