

Citation: *L. H. v. Minister of Employment and Social Development*, 2015 SSTAD 423

Appeal No: AD-15-72

BETWEEN:

L. H.

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 26, 2015

DECISION

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

BACKGROUND

[2] On January 21, 2015, the General Division of the Tribunal issued a decision in the Applicant’s appeal of a decision to refuse her a *Canada Pension Plan* (“CPP”), disability pension. The General Division Member found that the Applicant did not have a severe and prolonged disability. Therefore, she did not qualify for a CPP disability pension. The Applicant seeks leave to appeal the decision.

GROUND OF THE APPLICATION

[3] Counsel for the Applicant submits that the General Division failed to consider objective medical opinion provided by the Applicant’s primary treating physician, Dr. Millstein. In other words that the General Division committed an error by basing 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.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] The statutory provisions that apply to the grant of leave are found at s. 55, s. 56, s. 57 and 58 of the *Department of Employment and Social Development* (“DESD”) Act. S. 55 gives a right of appeal to the Appeal Division from decisions of the General Division of the Tribunal; while s. 56 governs the grant of leave to appeal. Time limits for bringing an application for leave to appeal are addressed in s. 57; and s. 58 sets out the grounds on which an appeal may be made.

[6] With respects to the grounds of appeal, ss. 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.

ANALYSIS

[7] In order for the Tribunal to grant the Application, the Applicant must demonstrate that there are grounds for appeal on one of the three enumerated grounds set out above. Further, pursuant to the DESD ss. 58(2), the Applicant must satisfy the Tribunal that her appeal has a reasonable chance of success.¹

[8] In the Application, Counsel for the Applicant submits that Dr. Millstein was of the view that the Applicant's medical conditions are chronic in nature and render her unemployable in any capacity. Counsel for the Applicant also contends that Dr. Millstein "unequivocally reports that the appellant's [applicant's] overall medical conditions in conjunction with her psychological disability are both severe and prolonged in nature." Counsel for the Applicant submits that the General Division Member failed to give due consideration to Dr. Millstein's objective medical opinion in the decision of January 21, 2015.

[9] The Applicant's minimum qualifying period date ("MQP"), is December 31, 2014.

[10] At paragraph 35 of the decision, the General Division Member recaps the content of the medical report of July 4, 2011 that Dr. Millstein provided. The General division Member noted Dr. Millstein's conclusion that the Applicant's diagnoses were chronic in nature and, as of the date of the report as well as for the foreseeable future, the Applicant would be unable to work due to severe and disabling pain. At paragraph 44, the General

¹ *Department of Employment and Social Development Act; Alves v. Canada (Attorney General)* 2014 FC 110.

Division Member summarizes Dr. Millstein's medical report of July 28, 2014, wherein, she opined that the Applicant is "extremely limited in her ability to function. She has ongoing anxiety, irritability and panic attacks which would significantly limit her in a work situation. She is not able to be employed currently or in the foreseeable future."

[11] The submissions of the parties indicate that there are conflicting medical opinions as to the severity of the Applicant's symptoms,² with the General Division Member clearly alluding to the supportive position that Dr. Millstein takes.³ The General Division Member notes that supportive positions were also taken by Dr. Tara in a July 12, 2011 report and by Dr. Weinroth in an April 23, 2013 report.

[12] At paragraph 50 of the decision, the General Division Member sets out the results of the various medical reports that document improvement in the Applicant's medical condition prior to the MQP. The General Division Member went on to weigh the conflicting medical opinions on the Applicant's medical conditions. Counsel for the Applicant argues that the General Division Member did not put sufficient weight on Dr. Millstein's medical opinion. However, weighing the evidence is in the purview of a General Division Member and, in the Tribunal's view, only a clear indication of error in this regard could suffice to disturb the General Division Member's conclusion. Disagreeing with the weight a General Division Member places on a medical opinion does not mean that the Member did, in fact, err.

[13] The Tribunal finds that in the face of conflicting medical reports it was reasonably open to the General Division Member to find, as she did, that she was not satisfied on a balance of probabilities that the Applicant suffered from a severe disability.

[14] In light of the foregoing, the Tribunal is not satisfied that the appeal has a reasonable chance of success.

² General Division decision at paras. 45 & 46.

³ Decision at para. 49.

CONCLUSION

[15] Leave to appeal is refused.

Hazelyn Ross

Member, Appeal Division