Citation: *A. M. v. Minister of Employment and Social Development,* 2015 SSTAD 426

Appeal No. AD-13-680

BETWEEN:

A. M.

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 27, 2015

DECISION

[1] The Social Security Tribunal (the "Tribunal") refuses leave to appeal.

BACKGROUND

[2] The Applicant seeks leave, ("the Application"), to appeal the decision of the Review Tribunal denying him a disability pension under the *Canada Pension Plan* ("CPP"). The Applicant claimed to have a severe and prolonged disability arising from his medical and mental health conditions. The Review Tribunal issued its decision on June 11, 2013.

[3] The Tribunal has received two Applications in this matter. The Applicant filed an Application with the Tribunal on August 13, 2013. This Application met the filing deadline set out in ss. 57(b) of the *Department of Employment and Social Development* ("DESD") *Act*. On September 10, 2013 the Tribunal received a second Application from Disability Claims Advocacy Clinic, a Saskatchewan organization, indicating that it was assisting the Applicant with his disability claim. This second Application included a request that it be treated as a "late appeal" and that the Tribunal extend the time for filing the Appeal. This request was stated to be based on the fact that the representative was new to the file and would require time to write a formal Leave to Appeal submission and anticipated difficulty in obtaining documentation from the Applicant. The Applicant's representatives also submitted that the Respondent would not be prejudiced if the Tribunal were to extend the time for filing the Application.

[4] In fact, this second Application did not meet all of the Tribunal requirements for such Applications as it included neither Reasons for the Application for Leave to Appeal nor Reasons for the Appeal. These boxes contain a statement that "additional documents will be forthcoming."

[5] Faced with an incomplete second Application and having already treated the original Application as complete the Tribunal wrote to the Applicant advising him that it would provide him with additional time to make any additional submissions he wished. The letter was also copied to his representatives and addressed to Ms. Alison Schmidt at Disability Claims Advocacy Clinic. The Tribunal's letter to the Applicant is reproduced below.

> "In the process of reviewing your file, the Tribunal Member noted that Ms. Allison Schmidt, in her correspondence dated September 9, 2013, indicated her desire to send additional documents to the Tribunal. In fact, the Tribunal has received additional documents in the form of an Echocardiography Report dated January 05, 2014. The Tribunal has acknowledged receipt of this additional information; nonetheless, prior to making a decision on your application for leave to appeal the Review Tribunal decision, the Tribunal would like to confirm whether you intend to file further submissions in support of your application. If so, kindly file your submissions within 20 days of the receipt of this letter, otherwise, the Tribunal will proceed to issue its decision on your leave application."

[6] As of the date this decision is rendered, the Tribunal has received no further submission from either the Applicant or his representatives.

GROUNDS OF THE APPLICATION

[7] In his original Application the Applicant grounds the Application in the DESD Act para. 58(1)(c), namely that the Review Tribunal 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. As stated above, the second and incomplete Application from the Disability Claims Advocacy Clinic did not contain grounds of appeal. In all the circumstances of this case, as described above, the Tribunal finds that it is not necessary to address the question of a "late appeal." Thus, the only issue before the Tribunal is whether or not to grant leave to appeal.

ISSUE

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

THE LAW

[9] The applicable statutory provisions governing the grant of Leave are ss. 56(1), 58(1), 58(2) and 58(3) of the DESD Act. Ss. 56(1) provides, "an appeal to the Appeal Division may only be brought if leave to appeal is granted" while ss. 58(3) mandates that the Appeal Division must

either "grant or refuse leave to appeal." Clearly, there is no automatic right of appeal. An Applicant must first seek and obtain leave to bring his or her appeal to the Appeal Division, which must either grant or refuse leave.

[10] Subsection 58(2) of the DESD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[11] On an Application for Leave to Appeal the hurdle that an Applicant must meet is a first, and lower one than that which must be met on the hearing of the appeal on the merits. However, to be successful, the Applicant must make out some arguable case[1] or show some arguable ground upon which the proposed appeal might succeed. 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.

[12] 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.

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

[14] In order to grant the Application, the Tribunal is required to be satisfied that the appeal has a reasonable chance of success. This decision requires the Tribunal to first determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal. Only then can the Tribunal assess the chance of success of the appeal.

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[1] *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[15] On considering the Review Tribunal decision in the context of the stated grounds of appeal the Tribunal is not satisfied that the appeal has a reasonable chance of success.

ANALYSIS

[16] The Applicant submits that the Review Tribunal erred in its appreciation of his medical conditions and their disabling effects on his life. The Applicant was represented at the Review Tribunal hearing. His MQP was found to be December 31, 2011. He pleads that he should be found disabled because he,

> "had a stroke in 2002 and it has deteriorated my health condition with time. My father and brother died at 62 due to heart attack. My 32 year old niece passed away due to the same reason. I was a mentally and physically strong person and recovered from it. But a few years later, my condition started getting worse. After I lost my job in 2011, I tried to work in a chocolate factory on call basis, but I used to have severe headaches for days and could not move. Now I cannot stand, walk or stay in one posture for more than 30 minutes. I need long breaks during my activities such as grocery shopping or walks. My headaches and dizziness do not allow me to focus for more than 10-15 minutes at a time for reading or computer work. Also, my memory is very weak and learning very slow. I have headache if I think for more than 10 minutes, go for shopping or chores around house. I requested employment agency for light job but they did not call me. I send my resume for jobs but no call for light jobs. My understanding is that due to my age and request for light work I do not get a job."

[17] These statements essentially repeat evidence that had been put to the Review Tribunal. The Review Tribunal considered the Applicant's health conditions and circumstance in light of the medical and other evidence that was before it. This includes the testimony of the Applicant's neighbor, who appeared as a witness and who testified to his cognitive deficits. However, on the basis of the medical evidence that was before it, the Review Tribunal was unable to find that the Applicant's health conditions were severe and prolonged within the meaning of CPP para. 42 (2)(a).

[18] While the Applicant (and his representatives) may take a different view of the evidence, the Tribunal is hard pressed to find where error resides in the Review Tribunal's treatment of the Applicant's medical conditions. The Tribunal finds that the Review Tribunal decision is sufficiently clear to allow it to understand how the decision was arrived at. Further, in all of the

circumstances of the case, the Tribunal finds that the decision was one that the Review Tribunal could, reasonably, have come to. These circumstances include the fact that the Applicant stopped work for a non-medical reason; the medical reports do not support the medical claims; there was no medical evidence of the depression and cognitive decline the witness testified to despite the Applicant being attended to by his family doctor for a year; and there was no evidence of him attempting to find alternate work. Therefore, for all of the above reasons, the Tribunal finds that the Applicant has not satisfied it that the appeal would have a reasonable chance of success.

CONCLUSION

[19] The Application is refused.

Hazelyn Ross
Member, Appeal Division