[TRANSLATION]

Citation: *G. R. v. Minister of Human Resources and Skills Development*, 2015 SSTAD 427

Appeal No. AD-14-122

BETWEEN:

G. R.

Applicant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Application for Leave to Appeal

SOCIAL SECURITY TRIBUNAL MEMBER: Shu-Tai Cheng

DATE OF DECISION: March 27, 2015

DECISION

[1] The Social Security Tribunal refuses the application for leave to appeal to the Appeal Division.

INTRODUCTION

[2] On March 15, 2013, the Review Tribunal (RT) determined that the Applicant's disability was not severe before December 31, 2010, during the minimum qualifying period (MQP).

[3] The Applicant filed an application for leave to appeal with the Appeal Division (the Leave Application) on May 10, 2013.

ISSUE

[4] The Social Security Tribunal of Canada (the Tribunal) must decide whether the appeal has a reasonable chance of success.

THE LAW AND ANALYSIS

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* provide that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and that the Appeal Division "must either grant or refuse leave to appeal".

[6] Subsection 58(2) of the *Department of Employment and Social Development Act* provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

[7] According to subsection 58(1) of the *Department of Employment and Social Development Act*, 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.

[8] A decision of the RT is considered a decision of the General Division.

[9] An application for leave to appeal is a preliminary step to a hearing on the merits. It is a first and lower hurdle for the applicant to meet than that which must be met on the hearing of an appeal on the merits. The applicant at the leave stage does not have to prove his or her arguments.

[10] Indeed, the Tribunal will grant leave to appeal if the applicant shows that any one of the above-mentioned grounds of appeal has a reasonable chance of success.

[11] To this end, the Tribunal must be able to determine, under subsection 58(1) of the *Department of Employment and Social Development Act*, whether there is a question of law, fact or jurisdiction the answer to which may lead to the setting aside of the decision attacked.

[12] In her Leave Application, the Applicant notes that:

a) she has been ill since 2009;

b) she needs a disability pension because she cannot work;

c) she must pay for medication and other expenses that she cannot afford;

d) there are no light duties in her area, and she does not have the education or ability to work with computers; and

e) she wishes to submit medical documents dated from September 13, 2013, to February 5, 2014.

[13] It is not the function of a Member who is determining whether leave to appeal should be granted, to reassess and reweigh the evidence that was put before the RT. Based on my reading of the file and the RT's decision, the Applicant's arguments, which are cited in paragraph 12 a) to d) of this decision, have already been addressed by the RT.

[14] The Applicant wishes to submit additional documents (see paragraph 12 e) of this decision) in support of her disability benefit claim. The additional documents must pertain to the grounds of appeal. However, the Applicant has not indicated how those documents support the above-mentioned grounds of appeal. If the Applicant is asking that we consider these additional documents, reassess the evidence, and reconsider the claim in her favour, I am unable to do so at this stage, given the constraints of subsection 58(1) of the *Department of Employment and Social Development Act*. Neither a Leave Application, nor an appeal, provides an opportunity to hear the merits of a case anew.

[15] If the Applicant's intent was to submit additional medical reports in order to have the RT's decision set aside or changed, she would have had to comply with the requirements of sections 45 and 46 of the *Social Security Tribunal Regulations*, and file an application to rescind or amend the decision with the General Division. In the present case, the Appeal Division does not have jurisdiction to rescind or amend a decision on the basis of new facts, because the division that made the decision, and no one else, is empowered to do so. That would be the General Division, in the RT's place. Strict time limits and requirements must be met in order for an application to rescind or amend a decision to succeed. Subsection 66(2) of the *Department of Employment and Social Development Act* requires that an application to rescind or amend a decision be made within one year after the day on which a decision is communicated to the parties. The RT decision is dated March 15, 2013. Consequently, the Applicant had one year after that decision was communicated, to apply to have the RT decision rescinded or amended. That period expired quite some time ago.

[16] Paragraph 66(1)(*b)* of the *Department of Employment and Social Development Act* requires an applicant to show that the new fact is a material one, and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

[17] In any event, it seems to me that the documents the Applicant proposes to tender would probably not constitute new facts under section 66 of the *Department of Employment and Social Development Act*. The Applicant's MQP ended on December 31, 2010. However, the medical reports that she wishes to submit are related to tests and appointments that took place between April and September 2013. Moreover, the tests and appointments were about the Applicant's condition in 2013, not her condition on or before December 31, 2010, the last date on which she could qualify for a disability pension.

[18] An application for leave to appeal is not a new hearing in which the Appeal Division can determine whether the Applicant meets the criteria for a disability pension. The Applicant must show that the RT failed to observe a principle of natural justice, that it erred in law, or that it based its decision on an erroneous finding of fact.

CONCLUSION

[19] The application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division