Citation: *R. D. v. Minister of Employment and Social Development,* 2015 SSTAD 450

Appeal No: AD-15-129

BETWEEN:

R. D.

Appellant

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: Janet Lew

DATE OF DECISION: March 31, 2015

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated January 27, 2015. 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 his minimum qualifying period of December 31, 2003.

[2] Counsel for the Applicant ("Counsel") filed an Application Requesting Leave to Appeal to the Appeal Division on March 16, 2015 (the "Leave Application"). Leave is sought on the ground that the General Division failed to take into consideration the Applicant's overall medical condition. To succeed on this application, the Applicant must establish that the appeal has a reasonable chance of success.

FACTUAL BACKGROUND

[3] The Applicant submitted an application for Canada Pension Plan disability benefits in November 2009. The Questionnaire for Canada Pension Plan Disability Benefits indicates that the Applicant was last employed as a machine operator in September 2008, when he stopped working due to a work-related injury. The Applicant stated that he suffers from chronic pain in his back, shoulders and knees, and that he also endures depression, migraines and sleepless nights. He described numerous functional limitations and restrictions. There was extensive medical documentation before the General Division, including various diagnostic scans and medical reports.

SUBMISSIONS

[4] Counsel submits that the General Division failed to take into consideration the Applicant's overall medical condition. He further submits that the Applicant has ongoing chronic pain, major depression, anxiety and a heart condition. He further submits that the Applicant's condition "is very serious and has given him limitations in his day to day activities and being able to work".

[5] The Respondent has not filed any submissions.

ANALYSIS

[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, 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.

[7] Subsection 58(1) of the *Department of Employment and Social Development* ("DESDA") set out the grounds of appeal as being limited to 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] 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. Here, Counsel has not set out any grounds of appeal that fall into subsection 58(1) of the DESDA.

[9] While Counsel submits that the General Division failed to take the Applicant's overall medical condition into account in assessing the severity of his disability, it is unclear whether Counsel alleges that the General Division should have addressed all of the evidence and submissions in its decision; that it focused on a particular medical condition to the exclusion of others; or focused on the Applicant's disability at his

minimum qualifying period, rather than his disability at the minimum qualifying period and continuously since then. Either way, I note the words of the Supreme Court of Canada in *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury Board)*, 2011 SCC 62, that:

> Reasons may not include all the arguments, statutory provisions, jurisprudence or other details the reviewing judge would have preferred, but that does not impugn the validity of either the reasons or the result under a reasonableness analysis. A decision-maker is not required to make an explicit finding on each constituent element, however subordinate, leading to its final conclusion *(Service Employees' International Union, Local No. 333 v. Nipawin District Staff Nurses Assn.*, [1975] 1 S.C.R. 382, at p. 391).

[10] Without setting out some particulars of the error or failing committed by the General Division, there is no basis upon which I can properly assess a leave application. While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, he ought to, at the very least, set out some bases for the leave application beyond making a general statement that an error was made or that the General Division failed to take into account an applicant's overall medical condition, without having the Appeal Division speculate as to what that error or failing might be. The Application is deficient in this regard and the Applicant has not satisfied me that the appeal has a reasonable chance of success on this ground.

CONCLUSION

[11] Accordingly, the application for leave is refused.

Janet Lew
Member, Appeal Division