

Citation: *R. L. v. Minister of Employment and Social Development*, 2015 SSTAD 463

Date: April 2, 2015

File number: AD-15-145

APPEAL DIVISION

Between:

R. L.

Applicant

and

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills Development)**

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applied for a *Canada Pension Plan* disability pension. He claimed that he was disabled as a result of physical restrictions, pain and mental illness that stemmed from two motor vehicle accidents. The Respondent denied the claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. The matter was transferred to the General Division of the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a videoconference hearing and on January 28, 2015 (the date of the decision of January 28, 2014 is a typographical error) dismissed the Applicant's appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Social Security Tribunal. He asserted that the General Division did not consider the totality of the evidence. He referred to a number of medical reports that were before the General Division that concluded that the Applicant was unable to work. The Applicant appended medical reports to the Application Requesting Leave to Appeal.

[3] The Respondent filed no submissions.

ANALYSIS

[4] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[5] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the *Act* sets out the only grounds of appeal that may be considered to grant leave to appeal a decision of the General Division (see the Appendix to this decision).

I must therefore decide if the Applicant has presented a ground of appeal under section 58 of the Act that has a reasonable chance of success on appeal.

[6] The Applicant argued that the General Division did not consider the totality of the evidence before it in making its decision. He also summarized a number of medical reports that concluded that the Applicant was not able to work as a result of a variety of physical restrictions and mental illness. The General Division decision contained a summary of the Applicant's testimony and the medical evidence. This summary did not include any conclusions that the medical practitioners came to regarding the Applicant's ability to work. This is not an error. However, the decision did not explain why the General Division reached the conclusion that the Applicant was not disabled under the *Canada Pension Plan* in light of the numerous medical opinions that he was unable to work. The law is clear that reasons for a decision should allow the reader to understand the decision that has been made, and why that decision was made (see *R. v. M. (R.E.)* 2008 SCC 51). Without some explanation of why the General Division concluded that the Applicant was not disabled in light of medical reports that contradicted this, one cannot understand why this decision was reached. Therefore, this ground of appeal may have a reasonable chance of success on appeal.

[7] The Applicant also filed a number of medical reports with the Application Requesting Leave to Appeal. The parties are reminded that the presentation of new evidence is not a ground of appeal under the *Department of Employment and Social Development Act*. The Act contains a separate procedure by which a party may seek to have a decision rescinded or amended based on new material facts.

CONCLUSION

[8] The Application is granted for these reasons.

[9] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) 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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.