

Citation: *C. R. v. Minister of Employment and Social Development*, 2015 SSTAD 487

Date: April 15, 2015

File number: AD-15-153

APPEAL DIVISION

Between:

C. R.

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, and claimed that she was disabled by a number of physical restrictions, depression and anxiety. The Respondent denied her claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. Pursuant to the *Jobs, Growth and Long-term Prosperity Act*, the matter was transferred to the General Division of the Social Security Tribunal on April 1, 2013. The General Division of the Tribunal held a videoconference hearing. On March 10, 2015 it dismissed the Applicant's appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. She argued that she was disabled under the *Canada Pension Plan* and that the evidence supported this. In addition, her lack of education and transferrable skills should have been given weight by the General Division in making its decision. Finally, the Applicant argued that she attempted to return to work but was unable to do so.

[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 (the section is set out in the Appendix to this decision). Therefore, I must determine 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 put forward three arguments as grounds of appeal. She first submitted that she was disabled under the *Canada Pension Plan* and that the evidence presented at the General Division hearing supported this. The General Division decision summarized the written and oral evidence. It weighed all of this evidence to reach its decision. The Applicant did not argue that the General Division made any error was made in so doing. The Federal Court of Appeal concluded that a tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the Tribunal that made the findings of fact (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). The Applicant's first argument asks the Appeal Division of the Tribunal to do just this. This is not a ground of appeal that has a reasonable chance of success on appeal.

[7] The Applicant also contended that her lack of education and transferrable skills should have been given weight by the General Division. The decision set out the Applicant's educational and work history. It considered this evidence along with the other evidence that was presented. Again, it is not for the Tribunal determining whether to grant leave to appeal to reweigh the evidence to reach a different conclusion. Therefore, this is also not a ground of appeal that has a reasonable chance of success on appeal.

[8] Finally, the Applicant argued that she attempted to return to work but was unable to do so. This evidence was presented at the General Division hearing and was considered and weighed by the General Division in making its decision. The Applicant did not contend that the General Division made any error with respect to this evidence. Therefore, this argument also does not have a reasonable chance of success on appeal.

CONCLUSION

[9] The Application is refused as the Applicant has not presented a ground of appeal that has a reasonable chance of success on appeal.

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.