Citation: ***M. G. v. Minister of Employment and Social Development,*** **2015 SSTAD 493**

Date: April 16, 2015

File number: AD-15-139

APPEAL DIVISION

Between:

M. G.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on April 16, 2015

REASONS AND DECISION

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

INTRODUCTION

[2] On December 19, 2014 the General Division of the Social Security Tribunal of Canada, (the "Tribunal"), determined that the Applicant was not entitled to a *Canada Pension Plan*, ("CPP"), disability pension because, on or before the minimum qualifying period date ("MQP"), his health conditions did not meet the criteria for severe and prolonged. On March 19, 2015, the Applicant filed an application for leave to appeal, (the "Application"), with the Appeal Division of the Tribunal. He relies on ss. 58(1)(a) and (b) as his grounds of appeal.

ISSUE

[3] The Tribunal must decide if the Application to grant leave to appeal has a reasonable chance of success.

THE LAW

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

[5] 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."

SUBMISSION

[6] The Applicant submitted that the General Division Member erred when he found that he was not entitled to a CPP disability pension. The sole ground of his Application is that he has suffered a "severe and prolonged" disability on or before the MQP. The Applicant goes on to state that the General Division Member erred in his decision.

ANALYSIS

[7] The Applicant indicates that, if successful on the Application, he would rely on ss. 58(1) and 58 (2) of the ESDC Act. The applicant contends that the General Division Member failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; and that the General Division erred in law in making its decision, whether or not the error appears on the face of the record.

[8] In deciding the Application, the Tribunal is required to determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal and whether any of them have a reasonable chance of success, before leave can be granted.

[9] Citing the legislative provisions, the Applicant contends that the General Division Member committed certain errors. However, outside of the bald allegation, the Applicant has not identified how the General Division Member failed to observe a principle of natural justice; or otherwise acted beyond or refused to exercise his jurisdiction. Neither has the Applicant identified any errors in law which the General Division may have committed in making its decision, whether or not such errors appear on the face of the record. Further, the Applicant has not identified any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[10] While at the leave stage an Applicant is not required to prove the grounds of appeal, the Tribunal is of the view that, at base, Applicants must set out some rational basis for their submissions that fall into the enumerated grounds of appeal. The Appeal Division ought not to have to speculate as to the true basis of the Application. It is not sufficient for an Applicant to state their disagreement with the decision of the General Division. Nor is it sufficient for an Applicant to express their continued conviction that their health condition(s) renders them disabled within the meaning of the CPP as the basis on which leave should be granted.

[11] The Application is deficient in this regard and the Tribunal is not satisfied that the appeal has a reasonable chance of success. In reaching this conclusion, the Tribunal notes that the Applicant's Minimum Qualifying Period date was agreed as December 31, 2005. The Applicant

had to establish that not only was he disabled before December 31, 2005; he also had to establish that his disability continued since that date. This is the legal test the General Division was required to apply and, the Tribunal finds, did apply.

[12] On examination, the preponderance of the pre-MQP medical evidence does not support a finding of disability. The General Division Member found that, on or before the MQP, the Applicant sustained injury to his leg that prevented him from performing ambulatory work. Nonetheless, he found that the medical documentation did not support a finding that the Applicant was incapable regularly of performing any substantially gainful employment on or prior to the MQP. The Tribunal is satisfied that the General Division Member gave consideration to the totality of the medical reports that were before him in reaching his decision that, on or before the MQP, the Applicant was required to avoid work that involved walking or much walking but was not prevented from engaging in work of a sedentary nature.

[13] It is clear from the decision that the General Division Member was alive to the deterioration in the Applicant's health condition, but given that the MQP is the critical date, the General Division Member's decision must be read in that context. The Applicant's medical condition may have deteriorated after the MQP; however, this is not the legal test. Accordingly, the Tribunal finds no error of law on the part of the General Division Member. Consequently, there is no basis on which the Tribunal can grant the Application.

CONCLUSION

[14] The Application is refused.

Hazelyn Ross
Member, Appeal Division