

**Citation: *N. K. v. Minister of Employment and Social Development*, 2015 SSTAD 488**

**Date: April 15, 2015**

**File number: AD-15-161**

**APPEAL DIVISION**

**Between:**

**N. K.**

**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. She claimed that she was disabled by pain, anxiety and panic attacks. The Respondent denied her 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 hearing and on February 6, 2015 dismissed the Applicant's appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. She contended that the General Division decision was not fair, that she had expected a lawyer, a doctor and a community member to form the panel at the General Division hearing, and set out that she had difficulty completing housework, and must ask for help from her children.

[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 can be considered to grant leave to appeal a decision of the General Division (see the Appendix to this decision). Hence, I must decide if the Applicant has presented a ground of appeal that has a reasonable chance of success on appeal.

[6] The Applicant argued, first, that the General Division decision was not fair. She did not contend that it contained any error of law, or of fact, or that the Tribunal had breached any of

the principles of natural justice. While I understand that the Applicant was not happy with the decision, this alone is insufficient to be a ground of appeal that has a reasonable chance of success on appeal.

[7] The Applicant argued, further, that she had expected that a panel composed of a lawyer, a doctor and a community member would hear her case. When the Applicant filed the documents to appeal to the Office of the Commissioner of Review Tribunals, the matter would have proceeded to a Review Tribunal. Review Tribunal hearings were held by three person panels such as the Applicant expected. When the Office of the Commissioner of Review Tribunals completed its mandate on March 31, 2013 all files were transferred to the Social Security Tribunal. Pursuant to the *Department of Employment and Social Development Act*, this Tribunal conducts hearings with one Member sitting alone. Conducting the hearing in this way was not a breach of any of the principles of natural justice. Therefore, the Applicant's expectation of who would hear and decide her case is not a ground of appeal that has a reasonable chance of success on appeal.

[8] Finally, the Applicant set out some of her physical limitations. The General Division decision described the Applicant's limitations and considered them in reaching its decision. The repetition of this information is not a ground of appeal under section 58 of the *Department of Employment and Social Development Act*. If the particular limitations set out in the Application Requesting Leave to Appeal to the Appeal Division were not specifically presented at the General Division hearing, their presentation at this time is not a ground of appeal that has a reasonable chance of success on appeal. Section 58 of the *Act* sets out the only grounds of appeal that can be considered. The presentation of new evidence is not a ground of appeal that is listed.

## **CONCLUSION**

[9] The Application is refused because 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.