

Citation: *J. W. v. Minister of Employment and Social Development*, 2015 SSTAD 516

Appeal No. AD-15-148

BETWEEN:

**J. W.**

Applicant

and

**Minister of Employment and Social Development  
(Formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: April 22, 2015

## **DECISION**

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

## **INTRODUCTION**

[2] On December 29, 2014 the General Division of the Social Security Tribunal, (the “Tribunal”), determined that a *Canada Pension Plan*, (“CPP”), disability pension was not payable to the Applicant. On March 24, 2015 the Applicant filed an application for leave to appeal, (the “Application”), with the Appeal Division of the Tribunal.

## **ISSUE**

[3] The issue before the Tribunal is whether the appeal has a reasonable chance of success necessitating the grant of leave.

## **THE LAW**

[4] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development, (“DESD”), Act*, state “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”.

## **ANALYSIS**

[6] In deciding this Application the Tribunal is required to determine whether the reasons for the Application relate to one of the grounds of appeal set out in ss. 58 (1) of the *DESD Act*. In support of the Application, the Applicant submitted that 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. He further submitted that he was never correctly diagnosed for PTSD. He states that it was not until 2005 that Darlene Gould at the Cumberland Medical Health Centre in X diagnosed him as suffering from PTSD. Additionally, the

Applicant alleged that his chronic back pain was not taken into consideration. However, for the reasons that follow the Tribunal is not persuaded that the General Division committed the alleged errors.

[7] The Applicant consulted with a number of medical practitioners both before and after his minimum qualifying period, (“MQP”), date of December 31, 2001. The General Division Member detailed the various medical reports in the evidence section of the decision. In her analysis, the General Division Member considered both the Applicant’s PTSD diagnosis, noting that the diagnosis was recent as well as the fact that he had displayed symptoms of anxiety since his termination. Further, the decision shows that the General Division Member did factor in the Applicant’s back pain into her analysis. At paragraph 29 she writes,

[29] The Appellant testified that he is able to control his back pain, and that it is primarily his anxiety and lack of confidence that is preventing him from working.

[8] The Applicant submits that his PTSD was not properly diagnosed prior to 2005. While in certain circumstances a post-MQP diagnosis can support a claim for CPP disability benefits, the diagnosis must suggest that the claimant had the disease at the relevant time<sup>1</sup>. Without determining the merits of the Applicant’s appeal, the Tribunal notes that when the Applicant met with Dr. Gould in 2005, she did not administer any of the usual tests. In fact, Dr. Gould referred the Applicant for a psychiatric assessment, which was performed on September 6, 2005.

[9] Dr. Umar expressed the result of the psychiatric assessment in the following terms, “patient presents with some symptoms of PTSD but he does not fit clear DSM IV criteria for PTSD. At best, his symptoms can be described as anxiety disorder NOS.” Further, it is apparent from Dr. Howe’s letter of March 2009, that while the Applicant describes himself as suffering from PTSD, this description is not necessarily shared by the mental health professionals who examined him as the diagnosis was not a full diagnosis of PTSD. The Tribunal finds that in the absence of a full diagnosis of PTSD the General Division decision cannot be challenged for an alleged failure to make a favourable finding based on a diagnosis of PTSD.

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<sup>1</sup> *MacRae v. MHRD*, (October 2, 2002), CP 19741.

[10] Additionally, the General Division decision was not made solely on the failure to find a severe health condition. The decision was as much, if not more, based on the absence of evidence that the well-educated Applicant made no significant efforts to treat his anxiety or to obtain alternative employment or retrain; all of which are requirements for a finding of severe and prolonged. Dr. Estabrooks' letter of May 6, 2009 indicates that the Applicant did not engage in a sustained treatment plan and, in fact, the Cumberland Mental Health Services file was closed in September 2007. While the Applicant was again referred to the institution in January 2008, Dr. Eastabrooks states he kept no appointment that was made for him.

### **CONCLUSION**

[11] The Applicant has submitted that the General Division erred as it 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. On the basis of the foregoing, the Tribunal is not satisfied that if leave to appeal is granted the appeal would have a reasonable chance of success.

[12] The Application is refused.

*Hazelyn Ross*

Member, Appeal Division