Citation: *S. C. v. Minister of Employment and Social Development*, 2015 SSTAD 525

Appeal No. AD-14-315

BETWEEN:

S. C.

Applicant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: April 27, 2015

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated February 25, 2014. The General Division determined that he was not eligible for disability benefits under the *Canada Pension Plan*, as it found that he did not have a severe disability at his minimum qualifying period of December 31, 2002.

[2] The Applicant filed an Application to Appeal to the Appeal Division on July 8, 2014. He seeks leave on the grounds that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision; and 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 October 8, 2014, counsel for the Applicant filed over 190 pages of medical records and notes from Sunnybrook Health Sciences Centre and from Drs. David Lawee, Dola Black, Michael Kliman and Arthur Karasik. On December 31, 2014, counsel filed an additional 487 pages of medical records from St. Joseph's Health Centre, dating back to 1995.

[3] To succeed on this leave application, the Applicant must satisfy me that the appeal has a reasonable chance of success.

ISSUE

[4] Does this appeal have a reasonable chance of success?

SUBMISSIONS

[5] Apart from filing various medical records, counsel has not made any further submissions beyond the Applicant's allegations that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision; and 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. The Respondent has not filed any written submissions.

ANALYSIS

[6] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, the Federal Court of Appeal found that an arguable case at law is akin to determining whether legally a leave application has a reasonable chance of success.

[7] Subsection 58(1) of the *Department of Employment and Social Development* (DESDA) sets out the grounds of appeal as being limited to the following:

> (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.

[8] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

a. <u>Alleged Errors of the General Division</u>

[9] Here, the Applicant alleges that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, but he does not identify the breach. Similarly, he alleges that the General Division erred in law and that it based its decision on erroneous findings of fact without regard for the evidence before it, but he does not set out the error of law or the alleged erroneous findings of fact.

[10] In my view, the Applicant is required to set out some particulars of the breach or error committed by the General Division. It is insufficient to make a general statement that

the General Division failed to observe a principle of natural justice, or that it made an error of law or based its decision on erroneous findings of fact that it made in a capricious or perverse manner or without regard for the material before it, without pointing to what the breach or errors might have been, and how they might have impacted upon the outcome. Otherwise, I have no basis upon which I can properly assess the leave application.

[11] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, he ought to, at the very least, set out some bases for the leave application beyond making a general statement that an error was made, without having the Appeal Division speculate as to what that error or failing might be. The leave application is deficient in this regard and the Applicant has not satisfied me that the appeal has a reasonable chance of success on this ground.

b. Medical Records

[12] Counsel for the Applicant has filed extensive materials in support of the leave application.

[13] The additional medical reports should relate to the grounds of appeal. Counsel for the Applicant has not indicated how the proposed additional facts or records might fall into or address any of the enumerated grounds of appeal. If counsel is requesting that we consider these additional facts and records, re-weigh the evidence and re-assess the claim in the Applicant's favour, I am unable to do so at this juncture, given the constraints of subsection 58(1) of the DESDA. Neither the leave application nor the appeal provides any opportunities to re-assess or re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*.

[14] If counsel has set out these additional facts on behalf of his client in an effort to rescind or amend the decision of the General Division, he must now comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and must also file an application for rescission or amendment with the same Division that made the decision. There are strict deadlines and requirements under section 66 of the DESDA for rescinding or amending decisions. Subsection 66(2) of the DESDA requires an application

to rescind or amend a decision to have been made within one year after the day on which a decision is communicated to a party, while paragraph 66(1)(b) of the DESDA requires an applicant to demonstrate that the new facts are material and could not have been discovered at the time of the hearing with the exercise of reasonable diligence. Under subsection 66(4) of the DESDA, the Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so.

[15] The medical records which were filed on October 8, 2014 and December 31, 2015 do not raise nor relate to any grounds of appeal and I am therefore unable to consider them for the purposes of a leave application.

CONCLUSION

[16] The Applicant has not cited with any specificity any errors or breaches which the General Division might have made in coming to its decision. As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, I am unable to find that the appeal has a reasonable chance of success and I therefore refuse the application for leave.

Janet Lew
Member, Appeal Division