

Citation: *M. N. K. v. Minister of Employment and Social Development*, 2015 SSTAD 526

Date: April 27, 2015

File number: AD-15-190

APPEAL DIVISION

Between:

M. 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 and claimed that he was disabled as a result of circulation difficulties in both legs that causes pain and limitations. The Respondent denied his claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. On April 1, 2013 the matter was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division of the Tribunal held a hearing and on February 2, 2015 dismissed the Applicant's claim.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. In support of this, he presented a recent letter penned by his treating doctor and argued that the General Division made erroneous findings of fact in a perverse or capricious manner, or without regard to the material before it.

[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 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* (the 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). Consequently I must decide 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 presented a recent letter written by his treating physician regarding the severity of his medical condition. Section 58 of the Act sets out the only grounds of appeal that can be considered. It does not include the presentation of new evidence. Therefore, the presentation of this medical report is not a ground of appeal that has a reasonable chance of success on appeal.

[7] The Applicant also contended that the General Division made an erroneous finding of fact in a perverse or capricious manner or without regard to the material before it. This is a ground of appeal under the Act. The Applicant did not, however, explain what finding of fact was erroneous, or how it was made in an improper manner. Without this, I am not persuaded that this ground of appeal has a reasonable chance of success on appeal.

CONCLUSION

[8] The Application is refused as the Applicant has not presented any 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.