Citation: *M. B. v. Minister of Employment and Social Development*, 2015 SSTAD 515

Appeal No. AD-15-147

BETWEEN:

M. B.

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: Hazelyn Ross

DATE OF DECISION: April 22, 2015

DECISION

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

INTRODUCTION

[2] On December 5, 2012 a Review Tribunal determined that the Applicant was not disabled within the meaning of the *Canada Pension Plan*, ("CPP"). The Applicant did not appeal the decision, instead, she wrote to the Review Tribunal asking that it "rescind or amend" the decision. In due course the Applicant's file was transferred to the Social Security Tribunal of Canada, (the "Tribunal"), with the General Division of the Tribunal becoming seised of the matter. On February 26, 2015, a Member of the General Division determined that there was no basis on which to rescind or amend the Review Tribunal decision. On March 24, 2015 the Applicant filed an application for leave to appeal, (the "Application"), with the Appeal Division of the Tribunal.

ISSUE

[3] In this Application for leave to appeal the Tribunal must decide whether the Appeal has a reasonable chance of success.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of 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 she found that there was no basis on which she could rescind or amend the Review Tribunal decision. In the submission of the Applicant, the General Division Member either failed to exercise her jurisdiction or based its decision on erroneous findings of fact which it made in a perverse or capricious manner or without regard for the material before her.

ANALYSIS

[7] On receiving the Review Tribunal decision in December 2012, the logical next step for the Applicant to take was to appeal the decision to the Pension Appeals Board. The Applicant did not take this step, instead she wrote to the Review Tribunal asking that it change its decision. When the matter came before the General Division Member she took the position that the Applicant's letters to the former tribunal constituted a properly filed application to rescind or amend the Review Tribunal decision. Having taken this position the General Division Member was obliged to properly apply the test for "rescind or amend" contained in s. 66 of the DESD Act. This test required the Applicant to provide the Tribunal with "new material fact (or facts) that she could not have discovered, with the exercise of reasonable diligence, at the time of the hearing." These new facts were to be "material", in the sense that they would have the potential to affect or change the Review Tribunal decision.

The governing statutory provisions

[8] The Tribunal's jurisdiction or ability to rescind or amend a decision is governed by s. 66 of the DESD Act. This provision provides that,

> 1. The Tribunal may rescind or amend a decision given by it in respect of any particular application if
>
> (a) In the case of a decision relating to the *Employment Insurance Act*, new facts are presented to the Tribunal or the Tribunal is satisfied that the decision was made without knowledge of, or was based on a mistake as to, some material fact; or

(b) In any other case, a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.

The task for the present Tribunal

[9] In deciding the Application, the Tribunal is required to determine whether the General Division Member either applied the wrong test or ignored pertinent information in coming to her decision. For the reasons that follow, the Tribunal finds that the General Division Member did neither.

Did the General Division Member apply the proper test?

[10] The Tribunal finds that the General Division Member properly applied the test for new facts. It is evident from the decision that the General Division Member considered all of the documents that the Applicant submitted as "new facts". The General Division Member concluded that these documents were not "new facts." She found that the documents spoke either to facts that were before the Review Tribunal in 2012 or did not relate to the Applicant's condition at the MQP (December 2009). The Tribunal finds that this is a proper application of the test for "new facts". Accordingly, the Application cannot be grounded on this basis.

Did the General Division Member ignore pertinent information?

[11] The Applicant contends that she is now disabled. The Applicant states that the documents she submitted establish that her disability is severe and prolonged. She also states that the General Division Member ignored the opinion of the fifteen doctors and specialists she consulted, arguing that all of the medical personnel agreed she was disabled.

[12] The Applicant's position and arguments do not take into consideration what the General Division Member had to decide. Her role was to assess whether or not the new documents were, in fact, "new facts", thereby allowing a full review of the Applicant's case. Further, the General Division Member had to assess the Applicant's new documents in the context of the Applicant's MQP and the Review Tribunal hearing. The enquiry being as stated earlier, if these documents were, in fact, new facts, are they material to a finding that

at the MQP the Applicant suffered from a severe and prolonged disability. On examining the documents, the General Division Member concluded that they did not meet the test for "new facts", thus ending the enquiry.

[13] The Tribunal has examined the reasons of the General Division Member for the errors cited by the Applicant. The Tribunal is not persuaded that the General Division Member's reasoning demonstrates the alleged errors. It is clear from the decision that the General Division Member paid due consideration to the new documents in reaching her decision including the information about the Applicant's condition as a whole. For this reason the Tribunal finds that the allegation that the General Division Member ignored the opinion of the doctors and specialists she consulted is not made out.

[14] 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 for rescinding or amending a decision. Accordingly, the Tribunal finds no error of law on the part of the General Division Member. The Applicant's clear disagreement with the decision of the General Division Member, notwithstanding, she has failed to satisfy the Tribunal that the appeal would have a reasonable chance of success. Consequently, there is no basis on which the Tribunal can grant the Application.

CONCLUSION

[15] The Application is refused.

Hazelyn Ross
Member, Appeal Division