

Citation: *C. M. v. Minister of Employment and Social Development*, 2015 SSTAD 552

Date: May 4, 2015

File number: AD-15-206

APPEAL DIVISION

Between:

C. M.

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 as a result of injuries from a motorcycle accident. The Respondent denied the Applicant's claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. On April 1, 2013 the appeal was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and on March 25, 2015 dismissed the appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. She contended that the General Division erred as it did not give appropriate weight to the evidence before it, that it erred in law as it did not consider the legal principles set out in a number of specific Pension Appeals Board and Federal Court of Appeal cases, and that the General Division did not assess the evidence on a balance of probabilities.

[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. 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 may be considered to grant leave to appeal a decision of the General Division (see the Appendix to this decision). Accordingly, 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 erred by not properly weighing the evidence before it. He pointed to a number of medical reports that concluded that the Applicant would be unable to work due to her injury and work history. She also argued that there was no evidence presented that established that the Applicant was not disabled. The General Division decision referred to the medical reports and the testimony presented at the hearing. In *R. v. Sheppard* (2002 SCC 26) the Supreme Court of Canada concluded that a decision maker is obliged to provide reasons for findings of fact that are based on contradictory evidence, and upon which the outcome of the case is largely dependent. The decision did not explain why it disregarded or gave little weight to the medical evidence and testimony that was contrary to its conclusion. Consequently it is unclear why the General Division reached the decision that it did. The result of this case was dependent on this. As a result, this ground of appeal has a reasonable chance of success on appeal.

[7] Next, the Applicant argued that the General Division applied the incorrect standard of review in this matter and the correct standard of proof would have been a balance of probabilities. The General Division decision, in paragraph 36, stated that the standard of proof was a balance of probabilities. The Applicant did not point to anything in the General Division decision that indicated that another standard of proof was applied. Consequently, I am not satisfied that this ground of appeal, alone, has a reasonable chance of success on appeal. Since leave to appeal has been granted on other grounds, however, I am prepared to receive further submissions on this at the hearing of the appeal.

[8] The Applicant argued further that the General Division erred in law as it did not properly consider a number of decisions listed in the Application Requesting Leave to Appeal to the Appeal Division. The *Villani v. Canada (Attorney General)* 2001 FCA 248 decision was considered by the General Division. It is not for the Appeal Division of the Tribunal, in deciding whether to grant leave to appeal to reweigh the evidence or the law to reach a different conclusion (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82). The remaining decisions cited by the Applicant are decisions of the Pension Appeals Board. They are not binding on the Social Security Tribunal. Therefore, the General Division decision did not err in not referring to these decisions. If the Applicant intended to argue that the General Division

decision did not consider all of the relevant legal principles, as set out in these decisions, I am prepared to receive further submissions on this at the hearing of the appeal.

[9] Finally, the Applicant set out a summary of the evidence that was presented at the General Division hearing. The repetition of this evidence is not a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is granted because the Applicant has presented a ground of appeal that has a reasonable chance of success on appeal.

[11] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

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.