Citation: ***L. T. v. Minister of Employment and Social Development,*** **2015 SSTAD 524**

Date: April 24, 2015

File number: AD-15-181

APPEAL DIVISION

Between:

L. T.

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 by abdominal pain and mental illness. The Respondent denied this claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. The matter was transferred to the General Division of the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division of the Tribunal held a teleconference hearing and on January 30, 2015 dismissed the Applicant's appeal.

[2] The Applicant sought leave to Appeal to the Appeal Division of the Tribunal. She argued that the General Division decision contained erroneous findings of fact made 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* 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 that has a reasonable chance of success on appeal.

[6] The Applicant first argued that leave to appeal should be granted because she is disabled. This statement does not disclose a ground of appeal that has a reasonable chance of

success on appeal. It does not point to any error of law or of fact, or any breach of the principles of natural justice by the General Division.

[7] The Applicant submitted, further, that the General Division decision contained an error when it stated that she had not received any treatment including medication for abdominal pain since her surgery in 2011. She referred to medical reports that were before the General Division that listed various medications that had been prescribed for her after surgery. This statement in the General Division decision is an error. The General Division placed weight on this erroneous finding of fact in coming to its decision. This argument is therefore a ground of appeal that has a reasonable chance of success on appeal.

[8] In addition, the Appellant contended that the General Division decision contained a similar error when it stated that the Applicant testified that her family physician had recommended that she attempt to return to modified work when the written reports from this doctor stated that she was unable to work. The General Division decision referred to the Applicant's testimony regarding being advised to return to work. It did not, however, reference the written report by the same doctor that contradicted this. In *R. v. Sheppard*, 2002 SCC 26 the Supreme Court of Canada concluded that a decision maker is obliged to give reasons for findings of fact made on contradicted evidence upon which the outcome of the case is largely dependent. The General Division relied on the Appellant's testimony, but gave no reasons to disregard the written evidence that contradicted it. This may therefore be an erroneous finding of fact made without regard to the material that was before the General Division. This argument has a reasonable chance of success on appeal.

[9] Finally, the Applicant argued that the General Division decision did not consider the numerous other medical consultations that she has attended to seek treatment for her condition. While the decision may not mention specifically each and every medical consultation that the Applicant attended, it summarized the medical reports that were before it. The Federal Court of Appeal has decided that a Tribunal is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence need not be mentioned in the written decision (*Simpson v. Canada (Attorney General)*, 2012 FCA 82).

Accordingly, this argument 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 grounds of appeal that have 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.