Citation: ***G. S. v. Minister of Employment and Social Development,*** **2015 SSTAD 551**

Date: May 4, 2015

File number: AD-15-203

APPEAL DIVISION

Between:

G. S.

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 by a heart attack and a stroke. He also complained of pain. 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 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 teleconference hearing on December 15, 2014. The Applicant did not attend the hearing. On January 15, 2015 the General Division dismissed the Applicant's appeal.

[2] The Applicant sought leave to appeal from the General Division decision. He argued that he had attended for physiotherapy and other treatments and was still trying to find a cure for his disability, that he was still waiting for an appointment with a back specialist and did not know when that would occur, and that the General Division made errors of fact in a perverse or capricious manner, or without regard to the material before it. He also included additional medical reports and promised to provide further reports once they became available.

[3] The Respondent did not file any 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). I must therefore decide if the Applicant has presented a ground of appeal under s. 58 of the *Act* that has a reasonable chance of success on appeal.

[6] The Applicant submitted that he had attended physiotherapy and other treatments, and despite this his disability was not cured. This argument may have been presented in response to the finding of fact in the General Division decision that the Appellant had not attended for physiotherapy. This argument does not, however, point to any error of fact made by the General Division in a perverse or capricious manner, or made without regard to the material that was before it at the hearing. It also does not point to any error in law or a breach of any of the principles of natural justice. Hence it is not a ground of appeal that has a reasonable chance of success on appeal.

[7] The Applicant also contended that he was still waiting for an appointment with a specialist and did not know when it would occur. He sought an extension of time to attend this appointment. He also included additional medical reports to support his claim. Section 58 of the *Department of Employment and Social Development Act* (DESD Act) sets out the only grounds of appeal that can be considered. The presentation of new evidence is not one of these grounds. Therefore, it is not appropriate to grant an extension of time for filing a report that may result after a medical consultation that has not yet been scheduled. The presentation of new medical evidence is also not a ground of appeal that has a reasonable chance of success on appeal.

[8] If the Applicant wishes to present additional medical reports in an effort to have the decision of the General Division rescinded or amended, he must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and he must also file an application for this relief with the same Division that made the decision. There are additional requirements that an Applicant must meet to succeed in an application to rescind or amend a decision. Section 66 of the DESD Act also requires an applicant to demonstrate that the new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. 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.

[9] Finally, the Applicant contended that the General Division "based its decision on an erroneous finding of fact… …" He did not identify what finding of fact was erroneous. He did not allege that any such erroneous finding of fact was made in a perverse or capricious manner, or without regard to the material before the General Division. Therefore, this argument is not a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is refused for the reasons set out above.

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.