

**Citation: *S. S. v. Minister of Employment and Social Development*, 2015 SSTAD 585**

**Date: May 11, 2015**

**File number: AD-15-228**

**APPEAL DIVISION**

**Between:**

**S. 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. The Respondent found that he was disabled, and granted him a disability pension commencing in October 1994. The Respondent subsequently investigated and determined that the Applicant had ceased to be disabled. The Applicant opposed this determination, and appealed the decision to the Office of the Commissioner of Review Tribunals. Although efforts to set a hearing were made, no hearing was held prior to April 1, 2013. The matter was then transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*.

[2] The General Division again made efforts to schedule a hearing. After some delay a hearing was scheduled for October 28, 2014. This was adjourned to January 27, 2015 at the Respondent's request. The Respondent then requested an adjournment of the January hearing date as he could not retain a representative. The General Division refused this request. On January 26, 2015 the Respondent produced a letter from his physician which stated that he was medically unable to attend the hearing.

[3] The General Division proceeded with the hearing on January 27, 2015. The Respondent did not attend. The General Division decision concluded that the Applicant had ceased to be disabled.

[4] The Applicant sought leave to appeal from this decision of the General Division. He argued that the General Division's refusal to grant an adjournment of the hearing breached the principles of natural justice as it prevented him from presenting his case. In addition, he argued that the General Division erred when it assumed that he produced a medical opinion to support his adjournment request only after a prior adjournment request had been denied.

[5] The Respondent filed no submissions.

### ANALYSIS

[6] 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.

[7] 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 (the section is set out in the Appendix to this decision). Therefore, 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.

[8] The Applicant argued that not granting the requested adjournment of the hearing in January 2015 was a breach of natural justice. This resulted in the Applicant not being able to present his case fully, explain evidence that had been presented against him or respond to the General Division's concerns. In addition, the Applicant noted that the General Division decision stated that some of the documents presented at the hearing demanded a response by the Applicant (paragraph 53 of the decision). This points to a breach of the principles of natural justice in this case. This ground of appeal may have a reasonable chance of success on appeal.

[9] The Applicant also contended that the General Division erred when it assumed that he produced a letter from his physician to support his request for adjournment only after other attempts to adjourn the matter had failed. The General Division decision contained a thorough summary of the procedural history of this matter. It considered the evidence presented by the Applicant and made its decision. I am not satisfied, on a balance of probabilities, that this argument points to an error of fact made in a perverse or capricious manner or without regard to the material before it, an error in law, or a breach of natural justice. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

## **CONCLUSION**

[10] The Application is granted for the reasons set out above. This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[11] The parties have 45 days from the day on which leave to appeal is granted to file submissions with the Appeal Division. It would be of assistance if the parties included submissions regarding what standard of review should be applied to a review of a discretionary decision made by the General Division.

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.

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- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
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- (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.