

**Citation: *R. K. v. Minister of Employment and Social Development*, 2015 SSTAD 586**

**Date: May 11, 2015**

**File number: AD-15-231**

**APPEAL DIVISION**

**Between:**

**R. K.**

**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 claimed that he was disabled by back pain and mental illness when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his 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 held a hearing and on February 18, 2015 dismissed the Applicant's appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Social Security Tribunal. He submitted that he disagreed with the General Division decision, and that the General Division decision contained errors regarding his efforts at treatment, and his work after the Minimum Qualifying Period. He also argued that his depression began before 2010 and that he suffered from mechanical back pain as well as mental illness.

[3] The Respondent filed no submissions.

### ANALYSIS

[4] 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 also concluded 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 (see the Appendix to this decision). Accordingly, I must decide if the Applicant has put forward a ground of appeal that has a reasonable chance of success on appeal.

[6] The Applicant presented a number of grounds of appeal. First, he stated that he disagreed with the General Division decision that he was not disabled under the *Canada Pension Plan*. Mere disagreement with the General Division decision is not a ground of appeal that has a reasonable chance of success. This argument does not point to any error made by the General Division.

[7] The Applicant also disagreed with the General Division conclusion that his depression started in 2010. The General Division decision concluded that the depression began in 2010 after considering the oral and written evidence that was presented at the hearing. The Appellant's argument asks this Tribunal to retry the evidence to reach a different conclusion. In *Gaudet v. Canada (Attorney General)* 2013 FCA 254 the Federal Court of Appeal held that a reviewing tribunal is not to retry the issues. Therefore this is not a ground of appeal that has a reasonable chance of success on appeal.

[8] Similarly, the Applicant submitted that the General Division erred in concluding that he had not made sufficient efforts with respect to treatment as he attended treatment paid for by the Workplace Safety and Insurance Board, attended a pain clinic, etc. Again, the General Division decision considered this evidence and weighed it in reaching its decision. For the same reasons, this is not a ground of appeal that has a reasonable chance of success.

[9] Finally, the Applicant contended that the General Division erred as it referred to the Applicant suffering from mechanical back pain, when this developed into chronic pain with associated mental illness. The General Division decision summarized all of the evidence that was before it with respect to the Applicant's physical and mental conditions both before and after the Minimum Qualifying Period (the date by which a claimant must be found disabled in order to receive a *Canada Pension Plan* disability pension). This evidence was considered and weighed by the General Division to make its decision. I am not satisfied, on a balance of probabilities, that this ground of appeal 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, it is not a ground of appeal that has a reasonable chance of success on appeal.

## **CONCLUSION**

[10] The Application is refused because the Applicant has not presented a ground of appeal that has a reasonable chance of success on appeal.

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.