Citation: *T. F. v. Minister of Employment and Social Development*, 2015 SSTAD 560

Appeal No. AD-15-195

BETWEEN:

T. F.

Applicant

and

Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: May 6, 2015

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

INTRODUCTION

[2] By a decision issued on March 23, 2015 the General Division determined that the Applicant was not entitled to a *Canada Pension Plan*, ("CPP"), disability benefit. On April 16, 2015, the Applicant filed an application with the Social Security Tribunal, ("the Tribunal") seeking leave to appeal, ("the Application"), the General Division decision.

ISSUE

[3] At issue before the Tribunal is whether the Appeal has a reasonable chance of success.

THE LAW

[4] Appeals of a General Division decision are governed by sections 56 to 59 of the *Department of Employment and Social Development Act*, ("DESD Act"). Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal."

[5] Subsection 58(2) of the DESD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

SUBMISSIONS

[6] The Applicant contends that he has a severe medical problem and a vocational profile that prevents him from obtaining any gainful employment. He also contends that his medical documentation supports a finding of total disability. Further, he contends that the General Division did not pay any attention to the Workplace Insurance and Safety Board, ('WSIB"), decision to grant him disability.

ANALYSIS

[7] 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.

[8] The grounds of Appeal are set out in subsection 58(1) of the DESD Act. These are the only grounds on which an appeal can be sustained. They are,

(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.

[9] In order to grant the Application, the Tribunal must first determine whether any of the Applicant's reasons for making the Application fall within any of the grounds of appeal set out above. Only then can the Tribunal assess the chance of success of the appeal. The Tribunal infers from the Applicant's statements that he is arguing that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it.

Did the General Division Member make its decision without regard to the material before it?

[10] The Applicant contends that the General Division ignored the WSIB decision and findings concerning his employability. It is clear that the Applicant's line of reasoning is to the effect that a finding of disability by the WSIB should lead, automatically, to a finding of

disability at the General Division. This reasoning is not correct. In *Halvorsen*[1], the Federal Court of Appeal decided that the fact that a provincial workers' compensation board determined that the (worker's) specific injury was not compensable was not relevant since the CPP does not make it a condition that the disability be work-related. The important point is that obtaining a certain decision before the WSIB does not automatically mean that the same decision would be obtained at the CPP. This is because the criteria applied to the decision making are not the same. The Pension Appeals Board underscored this point in its decision in *R.T. v. Minister (Human Resources and Skills Development),* (April 2, 2009), CP 24572 PAB.

[11] Therefore, the Application cannot be granted as an appeal on this point would not have a reasonable chance of success.

[12] The Applicant also submits that he suffers from a severe medical problem that is supported by the documentation on file. The Tribunal finds that this is no more than an expression of disagreement with the outcome of the hearing and the decision to deny him a CPP disability benefit. The Applicant's repetition of his contention that he is disabled within the meaning of the CPP is not a ground that would have a reasonable chance of success on appeal. It does not point to any error of fact or of law, or to any breach of the principles of natural justice on the part of the General Division. For this reason, the Tribunal cannot grant the Application.

CONCLUSION

[13] The Applicant was found to be disentitled to receive CPP disability benefits. He has filed an application for leave to appeal the decision. For the reasons set out above the Tribunal is not satisfied that he has raised an arguable case or that his appeal would have a reasonable chance of success. Consequently, there is no basis on which the Tribunal can grant the Application.

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[1] *Halvorsen v. Canada (Minister of Human Resources Development),* 2004 FCA 377.

[14] The Application is refused.

Hazelyn Ross
Member, Appeal Division