

Citation: *J. M. v. Minister of Employment and Social Development*, 2015 SSTAD 591

Date: May 12, 2015

File number: AD-15-227

APPEAL DIVISION

Between:

J. M.

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 pain and related symptoms. The Respondent denied her 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 teleconference hearing and on April 15, 2015 dismissed the Applicant's appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Social Security Tribunal. She contended that she was disabled, and although her condition had not been diagnosed, her symptoms prevented her from working. She also argued that she believed her case was "winnable" on appeal.

[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. 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 (this is set out in the Appendix to this decision). Therefore, I must determine if the Applicant has presented a ground of appeal that has a reasonable chance of success on appeal.

[6] The Applicant argued that she had many symptoms that prevented her from working, although she had not received a diagnosis. The General Division decision summarized, in some

detail, the Applicant's symptoms and the many medical reports regarding attempts to diagnose and treat her. The General Division considered all of the evidence and weighed it in making its decision. The Appellant's argument did not point to any error of fact, error of law or breach of natural justice by the General Division. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[7] The Applicant's other contention, that she believed the case was "winnable at the Appeals Branch", similarly does not point to any error made by the General Division. It is also not a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[8] 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.