Citation: ***J. M. v. Minister of Employment and Social Development,*** **2015 SSTAD 606**

Date: May 19, 2015

File number: AD-15-232

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. He claimed he was disabled by cognitive and other deficits as a result of addiction, and mental illness. He also had some physical limitations. 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 teleconference hearing and on February 25, 2015 dismissed the Applicant's appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Social Security Tribunal. He argued that the General Division erred in finding that he was not disabled based on the evidence including the written reports and testimony, that his former employer determined that he could not continue to work as a Registered Nurse, that his medical conditions made it impossible to work, and that with his worsening condition, his age, education and other factors it is impossible for him to pursue any substantially gainful employment. He also submitted that the General Division erred in law as it did not make a finding on his ability to work, and that even if the Applicant was able to work it would not be in a profitable or productive job. Finally, the Applicant contended that any evidence which showed that the Appellant was capable of carrying out domestic chores should not be accepted as evidence that he could work.

[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 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 (this is set out in the Appendix to this decision). Hence, 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.

[6] The Applicant presented a number of arguments as grounds of appeal. I am not satisfied, on a balance of probabilities, that any of the grounds of appeal that have a reasonable chance of success on appeal for the following reasons.

[7] The Appellant first argued that the General Division erred as it did not find him disabled based on the evidence presented. He did not allege that the General Division made any erroneous finding of fact in a perverse or capricious manner, or without regard to the material before it. The General Division decision contained a thorough summary of the written and oral evidence. This was considered and weighed by the General Division in reaching its decision. The General Division made no error in doing so.

[8] The Applicant also repeated facts and medical conclusions that were presented at the General Division hearing. The repetition of the evidence does not point to any error of fact or law, or any breach of the principles of natural justice. Similarly, the Applicant's repetition of the relevant law as set out in a number of court decisions does not point to any ground of appeal under the *Department of Employment and Social Development Act*.

[9] The Applicant also submitted that the Applicant's employer concluded that he was unable to complete his duties as a Registered Nurse. This is acknowledged in the General Division decision. The decision also stated, correctly, that the legal test to be found disabled under the *Canada Pension Plan* is not whether a claimant is able to perform his last job, but whether he is able to pursue any substantially gainful employment. The Appellant did not suggest that the General Division applied the incorrect legal test to the facts or made any error in law in this regard.

[10] Further, the Applicant argued that his medical condition(s) made it impossible to work. This argument was considered by the General Division and rejected. The General Division, after considering and weighing all of the evidence, found that the Applicant retained some capacity to work. It is not for the Tribunal deciding whether to grant leave to appeal to reweigh the evidence to reach a different conclusion. Assigning weight to evidence is the job of the trier of fact, the General Division in this case (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82).

[11] The Applicant also argued that with his worsening condition, his age, his education and other personal characteristics it is impossible for him to pursue any substantially gainful work. The General Division decision set out the Applicant's age, education and other factors. These were considered along with the other evidence in reaching the decision. Again, it is not for the Tribunal considering whether to grant leave to appeal to reweigh this evidence.

[12] In addition, the Applicant contended that the General Division erred in law as it made no finding with respect to the Applicant's ability to work and that even if it did, the General Division did not consider whether this work would be substantially gainful. The General Division decision considered and weighed all the evidence that was before it. Based on this it found that the Applicant retained some capacity to work. There was no evidence presented regarding any attempt by the Applicant to return to work in a capacity other than nursing, so the General Division could not assess whether any such work would be substantially gainful. I am not satisfied that the General Division made an error by not making a finding regarding whether the Applicant was able to pursue work that was substantially gainful when there was no evidence presented upon which this finding could be made.

[13] Finally, the Applicant argued that any evidence of his ability to perform domestic chores should not be evidence of his capacity to work. The General Division decision contains little detail about the Applicant's domestic abilities. There was no indication in the decision that the General Division placed a great deal of weight on this evidence, or that it equated these abilities with the Applicant having some capacity to work.

CONCLUSION

[14] The Application is refused because the Applicant did not present 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.