

**Citation: *D. N. v. Minister of Employment and Social Development*, 2015 SSTAD 641**

**Date: May 25, 2015**

**File number: AD-15-257**

**APPEAL DIVISION**

**Between:**

**D. N.**

**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 a knee injury at work and diabetes. She also has a learning disability. The Respondent denied her claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. On April 1, 2013 the appeal was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a videoconference hearing and on February 18, 2015 dismissed the appeal.

[2] The Applicant asked for leave to appeal to the Appeal Division of the Social Security Tribunal. She argued that she did not get a fair hearing, that she had a learning disability and was in a lot of pain, that she would like a hearing where the decision maker “can see for their self”, and that her doctor said that she was disabled.

[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 decided 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 (see the Appendix to this decision). The Applicant correctly set out these grounds of appeal in her Application Requesting Leave to Appeal to the Appeal Division. Consequently I must decide if the Applicant has presented a ground of appeal under the Act that has a reasonable chance of success on appeal.

[6] The Applicant argued that she did not get a fair hearing. She indicated that the General Division Member lied when she said that it would take two to four weeks to render the decision in this case, and the decision was rendered the following day. In law a fair hearing is concerned with ensuring that parties to a dispute have an adequate opportunity to present their case, answer the case against them and have a decision made by an impartial decision maker. The Applicant did not allege that this did not occur. The fact that the decision in her case was made before she anticipated is not legally unfair to the parties. This ground of appeal has no reasonable chance of success on appeal.

[7] The Applicant also argued that she had a learning disability and was in a lot of pain at the General Division hearing. These conditions were acknowledged and considered by the General Division in its decision as this was the basis for the Applicant's disability claim. The Applicant did not contend that these conditions were not properly considered by the General Division in coming to its decision, that the General Division erred in law or breached any of the principles of natural justice in its consideration of this.

[8] I also note that the Applicant was present at the hearing with her Representative. There is no indication that the Applicant had any difficulty participating in the hearing because of her physical or cognitive conditions. Therefore, I am not persuaded that the Applicant was denied a full and fair hearing because of her physical or cognitive conditions.

[9] In addition, the Applicant argued that she would like another hearing so that the decision maker "can see for their self". The General Division is the trier of fact. It is for it to receive evidence, weigh it and make a decision based on the evidence presented. The Appeal Division, in deciding whether to grant leave to appeal, is not to reweigh the evidence to reach a different conclusion (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82). An appeal to the Appeal Division of the Tribunal is not a re-hearing of the matter. Therefore, this argument does not have a reasonable chance of success on appeal.

[10] Finally, the Applicant stated that her doctor told her that she was disabled. This may be so. However, the legal test to be found to be disabled under the *Canada Pension Plan* is specific. It is different than what is required to be found disabled under a number of private insurance and government disability plans. Hence, the fact that the Applicant's doctor said

that she was disabled is not determinative of the issue under the *Canada Pension Plan*. While I have sympathy for the Applicant's circumstances, this Tribunal must apply the *Canada Pension Plan*. This argument does not have a reasonable chance of success on appeal.

## **CONCLUSION**

[11] The Application is refused as the Applicant has not presented a ground of appeal under section 58 of the Act 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.