

Citation: *P. M. v. Minister of Employment and Social Development*, 2015 SSTAD 649

Appeal No. AD-15-73

BETWEEN:

**P. M.**

Applicant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: May 26, 2015

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division dated December 12, 2014. The General Division determined that the Applicant was not eligible for disability benefits under the *Canada Pension Plan*, as it found that he did not have a severe and prolonged disability on or before December 31, 2013. The Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on February 19, 2015, on numerous grounds. To succeed on this application, the Applicant must establish that the appeal has a reasonable chance of success.

### **FACTUAL BACKGROUND**

[2] The Applicant filed an application for Canada Pension Plan disability benefits in January 2011. The Questionnaire for Canada Pension Plan Disability Benefits indicates that the Applicant had been employed as an autoworker until October 2010, as he had suffered a myocardial infarction on September 29, 2010, and had other medical illnesses, including adhesive capsulitis in his left shoulder following an injury in June 2010, pain throughout his left arm, post-traumatic stress disorder, substance abuse disorder, borderline personality disorder, major depression and type II diabetes. The Applicant listed numerous functional limitations, particularly anything involving heavy work. He experienced limitations with prolonged sitting, standing, walking, lifting, carrying, reaching, doing household maintenance or attending to his personal needs. He experienced increased pain with using public transit. He also experienced difficulties with concentration and sleep, due to his pain, depression, panic attacks and anxiety.

[3] The Applicant has undergone different therapies and participated in different treatment programs, including a program for traumatic stress recovery. He has been seen by various health caregivers and specialists. Much of the medical documentation before the General Division was prepared in 2011 and to a lesser extent, 2012. The most recent medical opinion was a brief letter dated June 19, 2013, from the family physician.

## SUBMISSIONS

- [4] The Applicant submits that the General Division erred as follows, that it:
- a) failed to consider the “complete and full extent of his disability” and to “all the facts including the extent of [his] disabilities which clearly limit his ability to properly and appropriately advocate on [his] own behalf”;
  - b) misunderstood the information he provided; and
  - c) did not give due consideration to the principle of "judicial fairness".

- [5] The Applicant wrote that:

[His] mental health disabilities [which are in no way under control], most particularly PTSD, OCD, and major depression severely limit [his] ability to comprehend what may be involved or occurring and [his] physical disabilities are sufficiently significant that they impact [his] ability to participate and to be cognizant of what may be occurring. [His] health has been deteriorating for at least 4 years both physically and mentally. As [he has] continued, through [his] disability payments, to contribute to CPP [as per CRA requirements] these past years [he] believe[s], should this application be refused, that [he] will be filing another application for CPP disability and [he] would prefer not to start all over.

- [6] The Respondent has not filed any submissions.

## ANALYSIS

[7] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, the Federal Court of Appeal found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success.

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* sets out the grounds of appeal as being limited to the following:

- (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] The Applicant needs to satisfy me that the reasons for appeal fall within any of the grounds of appeal and that at least one of the reasons has a reasonable chance of success, before leave can be granted.

[10] The Applicant submits that the General Division misunderstood the information he provided. I understand this to mean that ultimately the General Division based its decision on an erroneous finding of fact without regard for the material before it. Without setting out some particulars of the erroneous finding of fact upon which it based its decision, there is no basis upon which I can properly assess this ground. An applicant ought to, at the very least, set out some bases for this ground beyond making a general statement that the General Division misunderstood the information. As a starting point, an applicant ought to identify the information which he alleges the General Division misunderstood. The Applicant has not satisfied me that there is a reasonable chance of success on this ground.

[11] Similarly, the submissions that the General Division “did not give due consideration to the principal (*sic*) of judicial fairness” are unclear. What principle of “judicial fairness” did the General Division fail to give due consideration? Without providing some particulars for this submission, there is no basis upon which I can properly assess this ground.

[12] The final submission concerns whether the General Division failed to consider the totality of the evidence. The Applicant fails to identify what evidence he alleges the General Division did not consider. While the Applicant submits that the General Division failed to consider the “complete and full extent of his disability” in assessing severity, it is unclear

whether he alleges that the General Division should have addressed all of the evidence and submissions in its decision; that it focused on a particular medical condition to the exclusion of others; or other.

[13] Based on these submissions alone, the Applicant has not satisfied me that the appeal has a reasonable chance of success. If I were to restrict myself on this leave application to considering only those grounds alleged by the Applicant, I would readily dismiss the application, as he has not satisfied me that there is a reasonable chance of success on the grounds which he has set out. However, that does not conclude the matter, as I may find that the General Division might have erred in law, whether or not the error appears on the face of the record.

[14] The General Division stated the test for severity as whether he or she is incapable regularly of pursuing any substantially gainful occupation. However, at paragraph 37 of its decision, the General Division wrote:

In this case, the onus rests on the Appellant to substantiate that they are not capable of work as a result of their health condition.

[15] And at paragraph 39 that:

For these reasons, the Appellant failed to convince the Tribunal that he was suffering from a severe disability, as defined by the CPP, which precluded him from some type of employment at the time of his MQP.

[16] The General Division may have applied the wrong legal test for “severe”, as it may have required that the Applicant prove his capacity to work, rather than prove his incapacity regularly of pursuing any substantially gainful occupation. The General Division may have also required a higher standard of proof of the Applicant in that it required him to “substantiate” his case, rather than prove his case on a balance of probabilities. These two issues raise a reasonable chance of success.

## **CONCLUSION**

[17] The Application is granted.

[18] This decision granting leave in no way presumes the result of the appeal on the merits of the case.

*Janet Lew*

Member, Appeal Division