

Citation: *Y. V. v. Minister of Employment and Social Development*, 2015 SSTAD 650

Date: May 26, 2015

File number: AD-15-261

APPEAL DIVISION

Between:

Y. V.

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. In his application for this pension he claimed that he became disabled after suffering a heart attack in 2010. In the Application Requesting Leave to Appeal to the Appeal Division he claimed that he became disabled in 2008 after an automobile accident. The Respondent denied his application 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 on March 31, 2015 and dismissed the appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Social Security Tribunal. He argued that the General Division erred when it stated that the Applicant was looking for work in the manufacturing sector in 2008 when he was working at a jewelry store at that time, that he attempted to use his transferrable skills to find employment, that he had a severe and prolonged disability prior to the Minimum Qualifying Period and that the General Division erred in concluding that he had not met the legal requirements set out in *Inclima v. Canada (Attorney General)* 2003 FCA 117.

[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. 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 on appeal.

[6] The Applicant presented a number of grounds of appeal. First, he argued that the General Division erred in fact when it stated that he was looking for work in manufacturing in 2008 when he was working at a store at that time. The General Division decision contained a summary of the Applicant's work history, including that he started working at his wife's store in 2008 and stopped looking for other work at that time. I am not satisfied that the General Division made any factual error in a perverse or capricious manner or without regard to the material before it. This ground of appeal does not have a reasonable chance of success on appeal.

[7] The Applicant also asserted that he had a severe and prolonged disability prior to the Minimum Qualifying Period (the date by which a claimant must be found to be disabled in order to receive a *Canada Pension Plan* disability pension). This was the very issue that was to be decided by the General Division. The General Division was the trier of fact. It was to receive the parties' evidence, weigh it and render an impartial decision based on the evidence. It did so. By presenting this ground of appeal, the Applicant essentially asked this Tribunal to reevaluate and reweigh the evidence that was before the General Division. The Tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the tribunal who made the findings of fact (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). Therefore, this is not a ground of appeal that has a reasonable chance of success on appeal.

[8] Finally, in the *Inclima* decision the court concluded that where there is evidence of work capacity, a person must show that effort at obtaining and maintaining employment has been unsuccessful by reason of the person's health condition. The Applicant contended that he attempted to use his transferrable skills to find alternate employment and otherwise satisfied his obligations to try to obtain and maintain employment within his limitations. Again, the General Division decision contained a summary of the written and oral evidence that was presented to it, including the Applicant's attempts to work, how his work duties were modified and why he

believed he would not be hired by another employer. The General Division decision set out clearly the evidentiary basis for its conclusion that the Applicant had some residual capacity to work and that he did not satisfy the legal test set out in the *Inclima* decision. This evidence is not to be reweighed to reach a different conclusion by the Appeal Division of the Tribunal. This argument also does not have a reasonable chance of success on appeal.

CONCLUSION

[9] 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.