

Citation: *G. H. v. Minister of Employment and Social Development*, 2015 SSTAD 638

Date: May 25, 2015

File number: AD-15-241

APPEAL DIVISION

Between:

G. H.

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 that he was disabled by a number of physical injuries. The Respondent denied his claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. The appeal 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 hearing and on February 3, 2015 dismissed the Applicant's appeal.

[2] The Applicant asked for leave to appeal to the Appeal Division of the Social Security Tribunal. He argued that there were documents related to his wrist injury and back injury that he had sent to the Tribunal that were not before the General Division or considered by it, that there was no possible follow up regarding the arthritis in his neck, and he presented new evidence regarding various conditions.

[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 the Act that has a reasonable chance of success on appeal.

[6] The Applicant, first, argued that he had presented documents related to a permanent left wrist injury and a CT scan of his back to the Tribunal but they weren't in the written material before the General Division at the hearing, or considered by it when it made its decision. Both of these documents were dated prior to the hearing. As a result, the General Division may have made erroneous findings of fact without considering all of the relevant evidence. This ground of appeal has a reasonable chance of success on appeal.

[7] The Applicant also submitted that he did not understand why the General Division would state that there was no follow-up for the arthritis in his neck. He did not allege that the General Division made any error of fact or in law with respect to this, or that it breached any of the principles of natural justice. Therefore, this argument is not a ground of appeal that has a reasonable chance of success on appeal.

[8] The Applicant also presented new evidence to support his claim. He included his application for a disabled parking permit, dated in 2015, wrote that although he testified at the hearing that his neck pain had "quieted down" it was again causing him difficulty, had a "scope" on his knee after the hearing, and could obtain reports regarding his hernia surgery. Section 58 of the Act lists the only grounds of appeal that can be considered by the Appeal Division of the Social Security Tribunal. The presentation of new evidence is not a ground of appeal. Therefore, leave to appeal cannot be granted on the basis of new evidence presented by the Applicant.

[9] If the Applicant has presented this evidence in an effort to rescind or amend the decision of the General Division, he must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and he must also file an application to rescind or amend the decision with General Division. There are additional requirements that an applicant must meet to succeed in an application to rescind or amend a decision. Section 66 of the Act requires an applicant to demonstrate that the new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. The Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so.

[10] Finally, the Applicant set out in the Application Requesting Leave to Appeal to the Appeal Division that although he realized that his Minimum Qualifying Period was December 31, 2011 he thought the stroke that he suffered after that date should have been considered by the General Division. The *Canada Pension Plan* is clear that a disability pension claimant must be found to be disabled at the Minimum Qualifying Period. If a disabling condition arises after that date, no matter how tragic the circumstances, a disability pension cannot be granted on the basis of this condition. Although this may seem harsh, this is not a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[11] The Application is granted as the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal.

[12] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

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.