

Citation: *C. S. v. Minister of Employment and Social Development*, 2015 SSTAD 663

Appeal No. AD-15-219

BETWEEN:

C. S.

Applicant

and

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

Respondent

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

SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: May 29, 2015

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

INTRODUCTION

[2] The Applicant is in receipt of a retirement pension. She made a request to withdraw the retirement pension in favour of a disability pension. On March 13, 2015, the General Division of the Social Security Tribunal, (the Tribunal), issued a decision denying the Applicant a *Canada Pension Plan*, (CPP), disability benefit. The Applicant has filed an application seeking leave to appeal, (the Application), the General Division decision.

ISSUE

[3] The issue before the Tribunal is “does the Appeal have a reasonable chance of success?”

THE LAW

[4] Appeals of a General Division decision are governed by sections 56 to 59 of the *Department of Employment and Social Development Act*, (DESD Act). Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

[5] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.” Subsection 58(1) sets out the only grounds of appeal. They include breaches of natural justice; errors of law and errors of fact; and errors of mixed fact and law.¹

¹ **58(1) Grounds of Appeal –**

- 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.

SUBMISSIONS

[6] The Applicant has submitted that, in making its decision, the General Division erred in law and based its decision on an erroneous finding of fact.

ANALYSIS

[7] Applications for leave to appeal are the first stage of the appeal process. The threshold is lower than that which must be met on the hearing of the appeal on the merits. However, 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 Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[8] The Federal Court of Appeal has 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. Canada (Attorney General)*, 2010 FCA 63. Therefore, the Tribunal must first determine if the reasons for the Application relate to a ground of appeal that would have a reasonable chance of success.

Did the General Division err in law?

[9] I am required, as a first step, to determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal and whether any of them have a reasonable chance of success, before I can grant the Application.

[10] As grounds for the Application, the Applicant alleged that the General Division erred in law. Her submissions consist of the following:

The General Division erred in law in making its decision. The Appellant was forced to stop working as a result of severe pain in December 2010. The Appellant went to the North York Hospital, the Appellant is weak and sore and has painful knees/back and awakens at night. The General Division based its decision on an erroneous finding of fact. It should be noted that Dr. Mele retired in 2011 and the Appellant now sees Dr. Ciurria. The medical evidence is enclosed.

[11] The Applicant stated her reasons for the appeal as,

The Appellant has a severe and prolonged condition before the MQP date of December 2011. The appellant was forced to retire for medical reasons. The Appellant is unable to be substantially and gainfully employable. The Appellant has a prolonged condition as defined by the CPP legislation and the medical evidence. The Appellant took all reasonable steps to mitigate the loss of her functionality.

[12] Notwithstanding citing two of the enumerated grounds of appeal the Applicant has not identified any errors in law which the General Division may have committed in making its decision.

Is the decision based on an erroneous finding of fact?

[13] The Applicant has alleged that the General Division based its decision on an erroneous finding of fact but has not identified what this erroneous finding of fact consists of. She has submitted medical documentation in the form of her doctor's clinical notes. These notes show that all of her visits save the last, predated the General Division hearing. This last visit relates to a bladder infection. The Applicant has not shown how these medical documents relate to any erroneous findings of fact.

[14] While an Applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an Applicant ought to set out some basis for his or her submissions which fall into the enumerated grounds of appeal, without having the Appeal Division speculate as to what they might be. It is not sufficient for an Applicant to state their disagreement with the decision of the General Division and to express their continued conviction that their health condition(s) renders them disabled within the meaning of the *Canada Pension Plan*.

[15] The Application is deficient in this regard and I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[16] The Application for Leave to Appeal is refused.

Hazelyn Ross

Member, Appeal Division