Citation: *F. I. v. Minister of Employment and Social Development,* 2015 SSTAD 664

Appeal No. AD-15-248

BETWEEN:

F. I.

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 has filed an application seeking leave to appeal, (the Application), the decision of the General Division of the Social Security Tribunal, (the Tribunal), issued on February 16, 2015 and its finding that he is not entitled to a *Canada Pension Plan*, (CPP), disability benefit.

ISSUE

[3] The Application raises the following issue:

> Did the General Division reach its decision on erroneous findings of fact that it made without regard to the Applicant's medical evidence that was before it?

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]

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[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 submitted that, in making its decision, the General Division committed errors of law and errors of mixed law and 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.

[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.

Did the General Division err in law?

[10] The Applicant submits that the General Division did not adequately consider his application in a "real world" context. If established, this would amount to an error of law. While the Applicant has not specifically set out how the alleged error occurred, the Tribunal finds that the General Division did not commit the alleged error. The Applicant, who is suffering severe complications from diabetes, had the onus of establishing that, prior to the minimum qualifying period, (MQP) date of December 31, 2011, his disability was "severe and prolonged". The General Division Member found he had not met his onus because he failed to comply with recommended medical treatment and also because he failed to mitigate his damages by taking alternative work.

[11] The Applicant submits that his medical evidence is strong. He argues that his disability is severe and prolonged. The Tribunal infers from his submission that the General Division did not apply a "real world" context to his appeal, that the Applicant is arguing that in the real world he is not employable. Be that as it may, the Tribunal finds that the General Division did not err in law. Reliance is placed on the decision of the Federal Court of Appeal, in *Giannaros*[2] where it was decided that a "real world" analysis would not be necessary where the decision maker is not persuaded that there is a serious medical condition.

[12] *Giannaros* applies to the Applicant's case because the General Division made an earlier finding that, as of the MQP, the Applicant did not suffer from a severe medical condition.

Did the General Division base its decision on an erroneous finding of fact?

[13] The Applicant submitted the General Division disregarded the information before it and did not consider it; as well as failed to give adequate weight to his oral testimony; and misapprehended the test for disability. However, the Applicant has not shown how the General Division disregarded or failed to consider information that was before it. Further, outside of the bald statement that the General Division Member misapprehended the test for disability, the Applicant has not shown in what manner the General Division Member did so.

[14] As stated earlier, at the Application stage an applicant is not required to prove the grounds of appeal, however, some arguable ground on which the appeal might succeed is required. The Appeal Division should not have to 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*. The Application is deficient in this regard and I am not satisfied that the appeal has a reasonable chance of success.

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[2] *Giannaros v. Canada (Minister of Social Development)*, 2005 FCA 187.

CONCLUSION

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

Hazelyn Ross
Member, Appeal Division