Citation: *T. M. v. Minister of Employment and Social Development*, 2015 SSTAD 691

Appeal No. AD-15-285

BETWEEN:

T. M.

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: Janet LEW

DATE OF DECISION: June 4, 2015

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated April 28, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that she did not have a severe and prolonged disability on or before her minimum qualifying period of December 2010. The Applicant's Representative filed an Application Requesting Leave to Appeal to the Appeal Division on May 19, 2015. Leave is sought on the grounds that 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. To succeed on this application, the Applicant must satisfy me that the appeal has a reasonable chance of success.

SUBMISSIONS

[2] The Representative submits that the General Division failed to recognize the extent of the Applicant's disability prior to the minimum qualifying period. The Representative submits that the General Division erred in finding that there was insufficient objective medical evidence. The Representative submits that there was sufficient objective evidence before the General Division to substantiate a finding that the Applicant "was incapable of gainful and meaningful employment". He submits that the medical information on file indicates that the Applicant did have a disability that was both severe and prolonged pursuant to the *Canada Pension Plan*, prior to her minimum qualifying period.

ANALYSIS

[3] 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 and in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal found that an arguable case at law is akin to determining whether legally an application has a reasonable chance of success.

[4] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) 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.

[5] 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.

[6] Although the Representative submits that leave is sought on the grounds that 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, he does not cite any specific findings of fact which he alleges the General Division made erroneously. In my view, an Applicant is required to set out some particulars of the error or failing committed by the General Division. It is insufficient to make a general statement that the General Division based its decision on erroneous findings of fact that it made in a capricious or perverse manner or without regard for the material before it, without pointing to what the erroneous findings might have been, and how they might have impacted upon the outcome. Otherwise, I have no basis upon which I can properly assess the leave application.

[7] The Representative further submits that the General Division failed to recognize the extent of the Applicant's disability prior to the minimum qualifying period when it assessed the medical evidence before it. The Representative submits that there was sufficient objective evidence before the General Division to substantiate a finding that the Applicant "was incapable of gainful and meaningful employment".

[8] The Applicant has set out the wrong test for a severe disability. An applicant is considered to be severely disabled for the purposes of the *Canada Pension Plan* if he or she is "incapable regularly of pursuing any substantially gainful occupation", rather than being "incapable of gainful and meaningful employment".

[9] Apart from this consideration, the submission that the General Division failed to recognize the Applicant's disability does not properly fall into any of the enumerated grounds of appeal set out under subsection 58(1) of the DESDA. Essentially, counsel is requesting that I re-weigh the evidence and come to a different conclusion than that made by the General Division. This is beyond the scope of a leave application. The DESDA does not contemplate a reassessment of the evidence before the General Division at the leave stage. The DESDA requires an applicant to satisfy the Appeal Division that there is at least one reviewable error which not only falls into any of the enumerated grounds of appeal under subsection 58(1) but also has a reasonable chance of success. The Applicant has not done so under this ground.

CONCLUSION

[10] Accordingly, the application for leave is refused.

Janet Lew
Member, Appeal Division