Citation: *B. S. v. Minister of Employment and Social Development*, 2015 SSTAD 692

Appeal No. AD-15-289

BETWEEN:

B. 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: Janet LEW

DATE OF DECISION: June 4, 2015

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated April 16, 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 disability at her minimum qualifying period of December 31, 2011.

[2] The Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on March 20, 2015. To succeed on this application, the Applicant must satisfy me that the appeal has a reasonable chance of success.

SUBMISSIONS

[3] The Applicant submits that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. She further submits that there is "supporting documentation for [her] medication history, specialists seen and doctors note for [her] disability and pain suffering (*sic)*". As well, she submits that she qualifies for a disability pension as she has made "valid contributions to the CPP more than the minimum qualifying period".

[4] The Respondent has not filed any submissions.

ANALYSIS

[5] 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.

[6] 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.

[7] 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, before leave can be granted.

(a) Natural justice

[8] Although the Applicant submits that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, she has not set out any supporting details as to how the General Division might have failed to do so. An applicant ought to, at the very least, set out some bases for the leave application beyond making a general statement that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, without having the Appeal Division speculate as to what that failing might be. The Application is deficient in this regard and the Applicant has not satisfied me that the appeal has a reasonable chance of success on this ground.

(b) Supporting documentation

[9] The Applicant submits that she has documentation to support her claim to a disability pension. I do not know if she is referring to the evidence before the General Division, or is advising that she has additional documentation. Either way, this does not qualify as a proper ground of appeal. If the Applicant relies on the existing documentation that was before the General Division, this calls for a reassessment of the evidence.

[10] Essentially, the Applicant requests 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 that has a reasonable chance of success. The Applicant has not done so in this regard.

[11] If the Applicant is suggesting that she has additional documents which the General Division did not have before it, any additional medical reports should relate to the grounds of appeal. The Applicant has not indicated how any proposed additional facts or records might fall into or address any of the enumerated grounds of appeal. If she is requesting that I consider these additional facts and records, re-weigh the evidence and re-assess the claim in the Applicant's favour, I am unable to do so at this juncture, given the constraints of subsection 58(1) of the DESDA. Neither the leave application nor the appeal provides any opportunities to re-assess or re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*, short of a reviewable error having been established.

[12] If there are any new facts or records which the Applicant intends to file in an effort to rescind or amend the decision of the General Division, she must now comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and must also file an application for rescission or amendment with the same Division that made the decision. There are strict deadlines and requirements under section 66 of the DESDA for rescinding or amending decisions.

[13] Subsection 66(2) of the DESDA requires an application to rescind or amend a decision to have been made within one year after the day on which a decision is communicated to a party, while paragraph 66(1)(b) of the DESDA requires an applicant to demonstrate that the new facts are material and could not have been discovered at the time of the hearing with the exercise of reasonable diligence. Under subsection 66(4) of the DESDA, 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.

(c) Contributions to the Canada Pension Plan

[14] Finally, the Applicant indicates that she has made "valid contributions to the CPP more than the minimum qualifying period". Setting aside the fact that the General Division wrote that the parties agreed to a minimum qualifying period of December 31, 2011, it is unclear from this if she is alleging that the General Division erred in its calculation of her minimum qualifying period. The earnings history at page GT1-29 (and GT1-210) of the hearing file before the General Division however indicates that the Applicant did not make any contributions to the Canada Pension Plan after 2011.

[15] If there have been valid contributions to the Canada Pension Plan after 2011, there would need to be some evidence of this, but the Applicant would still be required to have met the contributory requirements, to determine whether the minimum qualifying period might be extended beyond December 31, 2011. This does not point to any errors (that fall within subsection 58(1) of the DESDA) on the part of the General Division. Given this, the Applicant has not satisfied me that there is a reasonable chance of success on this point.

[16] The other shortcoming to this submission is that if any earnings after 2011 qualify as a "substantially gainful occupation", this would undermine the Applicant's claim to a disability pension, as she could then be seen as having the capacity regularly of pursuing any substantially gainful occupation.

[17] Here, the Applicant has not set out any grounds of appeal that fall into subsection 58(1) of the DESDA.

CONCLUSION

[18] For the reasons above, the application for leave to appeal is refused.

Janet Lew
Member, Appeal Division