

Citation: *S. L. v. Minister of Employment and Social Development*, 2015 SSTAD 704

Date: June 5, 2015

File number: AD-15-283

APPEAL DIVISION

Between:

S. L.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on June 5, 2015

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On April 13, 2015, the General Division of the Social Security Tribunal of Canada, (the Tribunal), determined that the Applicant was not entitled to a *Canada Pension Plan*, (CPP), disability pension. The Applicant has filed an application for leave to appeal, (the Application), with the Appeal Division of the Tribunal in which he submits that the General Division decision was made without regard for the material before it.

GROUND OF THE APPLICATION

[3] The Applicant relies on subsection 58(1)(c) of the *Employment and Social Development (DESD) Act*. He argues 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. The Applicant stated that a security breach on the part of the Government Services prevented the General Division from having and considering all of his medical Long Term Disability reports. He states that in 1990 a positive diagnosis of Lyme disease was made and that, currently, he continues to suffer from the disease.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] Subsections 56(1) and 58(3) of the DESD Act provide 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.”

[6] 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.”

ANALYSIS

[7] The decision turned on the General Division’s finding that as of the Applicant’s minimum qualifying period date, (the MQP), he had retained work capacity. The Applicant’s case is a singular one because his application was made under the CPP Late Application Provisions and because his MQP date is September 30, 1985. The Applicant only applied for a CPP disability benefit in June 2009.

[8] The Tribunal deduces that the Applicant’s position is that if the General Division had had and considered the Long-Term Disability reports the General Division Member would likely not have come to the conclusion he did. The Tribunal is not persuaded by this position. The Applicant’s MQP date of September 30, 1985 precedes his diagnosis of Lyme disease by some five years. Further, the Applicant continued to work as a self-employed carpenter until November 2007.

[9] The General Division Member found that the evidence before him showed that the Applicant retained work capacity and, indeed, he worked for a little more than twenty-two years after his MQP. Notwithstanding any current Long Term Disability finding, the Tribunal is satisfied that the General Division did not err either in law or fact in its finding. The Tribunal finds that the ground of appeal is not made out.

CONCLUSION

[10] The Applicant alleged that the General Division made its decision without regard for the material before it. On the basis of the foregoing, the Tribunal finds that the allegation is not made out. Therefore, the Tribunal is not satisfied that the Applicant’s appeal would have a reasonable chance of success.

[11] The Application is refused.

Hazelyn Ross
Member, Appeal Division