Citation: *H. C. v. Minister of Employment and Social Development*, 2015 SSTAD 705

Appeal No. AD-15-239

BETWEEN:

H. C.

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: June 5, 2015

DECISION

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

INTRODUCTION

[2] On March 2, 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 Tribunal must decide whether the Appeal would 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]

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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 relies on all of the grounds of appeal set out in subsection 58(1) of the DESD Act, namely that the General Division either breached natural justice or refused to exercise its jurisdiction; made errors of law; or based its decision on erroneous findings of fact that it made in a perverse or capricious manner without regard for the material before it.

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 breach Natural Justice or refuse to exercise its Jurisdiction?

[9] The Applicant submitted that the General Division breached natural justice. However, she has not shown how the alleged breach occurred. Applicants for leave to appeal are required to show some minimal basis on which their Appeal could succeed, that is, they must make out an arguable case. The Applicant has made only the bald submission. She does not show how the breach took place; therefore, there is no basis by which the Tribunal might find that a breach could possibly have taken place. Accordingly, the Tribunal cannot find that an arguable case has been made out under this head.

Errors of Law

[10] The Applicant has also submitted that the General Division made errors of law in deciding her appeal. Again, she has not made out an arguable case. She does not point to anything in the General Division's decision that could support her submission. The Tribunal finds that the General Division Member committed no error of law.

Errors of Fact

[11] The Applicant maintains that she is disabled within the meaning of paragraph 42(2)(a) of the CPP. She has submitted a copy of an MRI report dated the 6th of March 2015. This new report shows that the Applicant has some moderate disc degeneration changes at the L5- S1, L4-5 and L3-4 of her spine. However, that the Applicant suffered from degenerative disc disease was information that was before the General Division hearing. The Applicant has not shown how the General Division Member disregarded the evidence of her degenerative disc disease or how the General Division Member made her decision on an erroneous finding of fact. Neither has she shown that the General Division Member found facts in a perverse or capricious manner without regard to the material before her.

[12] The Applicant pleads adverse economic circumstances as her reason for seeking leave to appeal. Unfortunately, this is not a ground of appeal. Consequently, the Tribunal must refuse the Application.

CONCLUSION

[13] At the Application stage an Applicant need only succeed in raising one ground of appeal. The Tribunal finds that she has not done this. The Application for Leave to Appeal is refused.

Hazelyn Ross
Member, Appeal Division