

Citation: *J. G. v. Minister of Employment and Social Development*, 2015 SSTAD 741

Appeal No. AD-15-298

BETWEEN:

J. G.

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 17, 2015

DECISION

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

INTRODUCTION

[2] On April 28, 2015, the General Division of the Social Security Tribunal of Canada, (the Tribunal), issued its decision denying the Applicant's appeal from a decision refusing payment of a *Canada Pension Plan*, (CPP), disability pension. The Applicant seeks leave to appeal this decision. He states that he is now on a waiting list for a total hip replacement and he repeats that he is in dire financial need.

ISSUE

[3] The Tribunal must decide if the appeal has 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).¹ Before an appellant could appeal a General Division decision, the Appeal Division must first grant leave to appeal. To grant leave the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. A reasonable chance of success has been seen as being equal to an arguable case.

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

[5] The Applicant submits that at the time of the General Division hearing he was waiting for a consultation with an orthopaedic surgeon. This consultation occurred on April 15, 2015. The Applicant is now on a waiting list to have his hip replaced. It may be eight months before he could have the surgery. He submits that his various impairments should make him eligible for CPP disability payments.

ANALYSIS

[6] 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).

[7] The Applicant's reasons for appeal, while highly sympathetic, do not establish that his appeal has a reasonable chance of success. The Application does not disclose a ground of appeal. The Applicant has not shown how the General Division breached natural justice; or erred in law; or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it.

[8] Further, while it may be a bitter pill for the Applicant to swallow, economic hardship cannot form the basis of a CPP disability pension. Thus, individuals who, like the Applicant, experience significant and prolonged health challenges may still not qualify for a CPP disability pension. *Atkinson v. Canada (Attorney General)* 2014 FCA 187.

[9] In addition, from the reference to his hip surgery, the Tribunal concludes that the Applicant may be seeking CPP disability on a short-term or interim basis. This too is not permitted under the CPP.

CONCLUSION

[10] For these reasons, the Tribunal is not satisfied that the Applicant has raised an arguable case or that the appeal has a reasonable chance of success.

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

Hazelyn Ross

Member, Appeal Division