Citation: *B. W. v. Minister of Employment and Social Development*, 2015 SSTAD 743

Appeal No. AD-15-307

BETWEEN:

B. W.

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 March 25, 2015, the General Division of the Social Security Tribunal of Canada, (the Tribunal), issued its decision refusing the Applicant's appeal of a denial of payment of a *Canada Pension Plan*, (CPP), disability pension. The Applicant seeks leave to appeal this decision.

ISSUE

[3] The Tribunal must decide if 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). To grant leave the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. 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 and *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

ANALYSIS

[5] At this first application stage of the appeal process, an applicant need only raise an arguable case. The threshold is lower than that which must be met on the hearing of the appeal on the merits. However, the Tribunal must first decide whether the reasons for the Application for leave to appeal relate to a ground of appeal and whether the appeal would have a reasonable chance of success.

[6] The General Division found that as of the Minimum Qualifying Period, (MQP), date of December 31, 2013, the Applicant did not meet the criteria for severe and prolonged disability. The Applicant expressed his disagreement with the General Division decision. He gave the following reasons for why he was making the Application for leave to appeal.

- That he has an appointment to meet with his doctor and look at x-rays;
- That the ODSP (the Ontario Disability Support Program) has found him to be disabled, therefore, the CPP should make the same finding.
- That the lumbar fusion of his back was not successful and his arthritis condition will worsen and not improve.

[7] The Tribunal considered the Applicant's stated reasons for making the Application. Unfortunately, the Applicant's reasons do not relate to a ground of appeal. The Applicant has not shown how the General Division might have breached natural justice, or erred in law or made its decision in a perverse or capricious manner or without regard for the material before it. It is not sufficient for an Applicant applying for leave to merely express disagreement with the decision being appealed from.

[8] With regard to the specific reasons that the Applicant put forward, unless the Applicant is asking to have the decision rescinded or amended on the basis of new facts, a consultation that he will attend with his doctor cannot form the basis of a successful application for leave to appeal. Even then there is no guarantee that the future consultation would lead to a successful application to rescind or amend an earlier decision.

[9] The Applicant's second argument is one that is often raised in applications for leave. It must be remembered, however, that the CPP and the ODSP are two distinct schemes with different criteria for assessing disability. The major difference being that the CPP is a contributory scheme with defined benefits and terms of entitlement. It is not a social welfare scheme *(Granovsky v. Canada*), [2001] 1 S.C.R. 703. Thus the mere fact that the ODSP found the Applicant to be disabled does not mean that he will also be found to be disabled for the purposes of the CPP.

[10] The Tribunal does not doubt the truthfulness of the Applicant's complaint that past medical procedures have been unsuccessful and that his medical conditions will likely worsen, however, the Tribunal finds that this is not a ground of appeal on which the Applicant might be successful. The important date is the MQP, namely, December 31, 2013. The General Division found that as of that date the Applicant was not disabled within the CPP meaning, and he has not shown in what way the finding is in error. For all of the above reasons, the Tribunal is unable to grant the Application

CONCLUSION

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

Hazelyn Ross
Member, Appeal Division