

Citation: *R. K. v. Minister of Employment and Social Development*, 2015 SSTAD 770

Appeal No. AD-15-300

BETWEEN:

R. K.

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 19, 2015

DECISION

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

INTRODUCTION

[2] On February 25, 2015, the General Division of the Social Security Tribunal of Canada, (the Tribunal), issued its decision dismissing 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. She submits that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction

ISSUE

[3] The Tribunal must decide if the appeal would have a reasonable chance of success.

THE LAW

[4] The applicable legislative provisions that govern the grant of leave are found at 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; a reasonable chance of success being equated to an arguable case. 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.

ANALYSIS

[5] At the 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 relate to a ground of appeal that would have a reasonable chance of success.

[6] The Applicant made a number of submissions that were centred mainly on her medical conditions and her attempts to find work over the past five years. She attached new medical reports that she stated support her position that her medical conditions pose significant restrictions on her ability to work. This is not a “new facts” application pursuant to section 66 of the DESD Act and, therefore, this new information cannot be considered in the context of the application for leave. Nonetheless, the Tribunal finds that the Applicant has raised an arguable case in respect of her submission that the General Division erred when it found her to be “somewhat exaggerative”.

[7] At paragraph 61 of the decision, the General Division makes the finding that “during her testimony, the Appellant was somewhat exaggerative in her descriptions.” The General Division Member went on to give the following example of the Applicant’s exaggerative tendencies, stating that, “for example, indicating that it would take her 15 minutes to get out of her car. She indicated that Dr. Fleming had stated that she was too young and should not get her knees replaced until she was 60 years of age; the Tribunal cannot find any reference to this statement in his reports and specifically, in his report pertaining to the left knee arthroscopy.” The Applicant has submitted a medical report that she states supports her position that Dr. Fleming did give her the claimed advice. However, what concerns the Tribunal is not the absence or the presence of a supportive medical report, but that the Applicant has misinterpreted the General Division Member’s phrasing, leading her to conclude that there were good grounds to find them indicative of a reasonable apprehension of bias.

[8] The Tribunal underscores that it is not making such a finding. However, it is implicit in the Applicant’s submission that there has been a breach of natural justice, that she views the use of the term “somewhat exaggerative” as indicative of bias. For these reasons, the Tribunal grants the Application for Leave.

CONCLUSION

[9] The Application for Leave to Appeal is granted.

Hazelyn Ross

Member, Appeal Division