Citation: *S. S. v. Minister of Employment and Social Development*, 2015 SSTAD 756

Appeal No. AD-15-330

BETWEEN:

S. S.

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 refused.

INTRODUCTION

[2] On March 9, 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.

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 did not refer to any of the stated grounds of appeal. However, his main submission is that the General Division did not properly assess the information and evidence

that was before it. He relies on the statement by his family physician in the medical questionnaire, dated August 15, 2011, "that he has severe cervical disc disease with severe weakness of the left arm, as well as severe lumbrosacral disc disease with bilateral sciata. Both of these conditions are disabling and will get worse over time. S. S. is severely physically disabled + will likely be disabled for the rest of his life." He reiterates his medical history and submits that that history allows him to meet the criteria for "severe and prolonged".

[7] This information was, of course, before the General Division hearing. An examination of the General Division decision reveals that the Member made a detailed analysis of the medical reports and evidence that was before him and gave reasons why he came to the decisions about the medical evidence that he did. The Tribunal finds that the General Division Member provided cogent reasons for his decision. The Tribunal finds that the General Division had regard for the material before it. Further, the Tribunal is not satisfied that a new Tribunal would necessarily come to different conclusions about the medical and other evidence that was before the General Division on March 09, 2015.

[8] The Tribunal understands that the Applicant disagrees with the General Division decision. The Tribunal also understands that the Applicant remains convinced that he should be found deserving of a CPP disability pension, however, a finding of "severe and prolonged" disability must conform to the strict requirements of the statute; it cannot be based on an applicant's self-assessment. In the circumstances, the Tribunal is not satisfied that the Applicant has raised an arguable case such that it would permit the Tribunal to grant leave.

CONCLUSION

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

Hazelyn Ross
Member, Appeal Division