

Citation: *S. K. v. Minister of Employment and Social Development*, 2015 SSTAD 757

Appeal No. AD-15-138

BETWEEN:

S. 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: Janet LEW

DATE OF DECISION: June 19, 2015

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated January 16, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that she did not have a severe disability at her minimum qualifying period of December 31, 2012.

[2] Counsel for the Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on March 17, 2015. Leave is sought on the grounds that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; erred in law in making its decision, whether or not the error appears on the face of the record; and 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. To succeed on this application, the Applicant must establish that the appeal has a reasonable chance of success.

FACTUAL BACKGROUND

[3] The Applicant submitted an application for Canada Pension Plan disability benefits in April 2011. The Questionnaire for Canada Pension Plan Disability Benefits indicates that the Applicant was last employed as a housekeeper in a hotel in March 2010, when she stopped working due to a workplace injury. The Applicant stated in her Questionnaire that she suffers from chronic lower back pain that radiates to both legs and urinary stress incontinence. The evidence discloses that she also has severe depression. The Applicant described numerous functional limitations and restrictions. The documentation before the General Division consisted of medical expert opinions and records, a vocational report dated July 26, 2013 and various diagnostic scans.

SUBMISSIONS

[4] Counsel submits that the Applicant qualifies for a disability pension under the *Canada Pension Plan*, as she has a severe and prolonged disability due to depression, lower back pain, radiating left leg radiculopathy, and urinary stress incontinence. Counsel further submits that the disabilities are likely to be permanent and of indefinite duration. He submits

that the cumulative effect is that the Applicant is precluded from pursuing any substantially gainful employment, including work in the sedentary strength category.

[5] The Respondent has not filed any submissions.

ANALYSIS

[6] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[7] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (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.

[8] The Applicant needs to satisfy me that the reasons for appeal fall within any of these grounds of appeal and that at least one of them has a reasonable chance of success, before leave can be granted.

[9] While counsel employs the language set out in subsection 58(1) of the DESDA, he does not go any further by identifying the principle of natural justice or how the General Division might have failed to observe a principle of natural justice. Counsel also does not set out how the General Division may have erred in law in making its decision. In addition, counsel does not identify the erroneous finding of fact that it made in a perverse or capricious manner or

without regard for the material before it, upon which he alleges the General Division based its decision. If I am to be able to meaningfully assess a leave application, an Applicant ought to, at the very least, set out the very errors which the General Division is alleged to have made, and which fall into the permitted grounds of appeal. He has not done so in this regard. The Applicant ought to identify the alleged errors, rather than leave me speculating as to what they might be.

[10] Counsel provided a brief description of the Applicant's disabilities and submits that the cumulative effect is that the Applicant is precluded from pursuing any substantially gainful employment, including work falling in the sedentary strength category. These are not relevant considerations to a leave application, as they do not fall within any of the enumerated grounds of appeal.

[11] For the purposes of a leave application, I am restricted to considering only those grounds of appeal which fall within subsection 58(1) of the DESDA. The subsection does not permit me to undertake a reassessment of the evidence. As counsel has not identified with sufficient specificity any errors which the General Division may have made in its decision, the Applicant has not satisfied me that there is a reasonable chance of success on the grounds raised by her counsel.

CONCLUSION

[12] The Application is refused.

Janet Lew

Member, Appeal Division