Citation: *S. T. v. Minister of Employment and Social Development*, 2015 SSTAD 760

Appeal No. AD-15-329

BETWEEN:

S. T.

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 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.

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] In lengthy submissions, the Applicant complained that the General Division had not only come to the wrong conclusion in finding that she was not entitled to a CPP disability

pension, she submitted that the General Division had discriminated against her as a person with mental health difficulties. The Applicant submitted, among other positions, that her attack in 2007 was the direct cause of her inability to deal with stressful situations resulting in her being an unreliable employee.

[7] In making her submissions the Applicant placed great reliance on published documents and positions of the Ontario Human Rights Commission concerning discrimination against persons with mental health issues.

[8] The Tribunal has carefully considered the Applicant's submissions and arguments. For the following reasons the Tribunal finds that her positions are not supported by either the documentary evidence that was before the General Division or the decision itself; and do not reveal a ground of appeal that would have a reasonable chance of success.

[9] The Applicant's minimum qualifying period, (MQP), ended as of December 31, 2008. This is the date, then, by which the General Division would have had to find that the Applicant was disabled. The evidence that was before the General Division did not establish that the Applicant became disabled within the meaning of the CPP on or before December 31, 2008. Rather the evidence established that while, prior to the MQP, the Applicant had medical difficulties including a heart attack in 2007; she retained capacity to work and, in fact, did work from October 2010 to May 2011, which is well after the MQP date.

[10] The Tribunal is not persuaded that the General Division Member's finding that the objective medical evidence does not support that the Applicant had a severe and prolonged disability on or prior to December 31, 2008 is in any way an error of law or an error of mixed fact and law. Neither is the Tribunal persuaded that the General Division reached its decision without regard for the material before it as the decision contains a fulsome report and analysis of the various medical reports and their content. It may well be that the Applicant is now disabled, however, on the basis of the material before it, the Tribunal is not satisfied that the appeal would have a reasonable chance of success.

[11] The Tribunal finds that the seminal portion of the General Division decision is contained at paragraph 35, namely

> [35] As the Appellant initially indicated in her application, she was last able to work in May 2011. This is well after the MQP. The Tribunal understands the Appellant's [*sic*] is in financial need; however, the Tribunal cannot grant an appeal based on this basis. The Tribunal acknowledges that the Appellant was suffering with health issues at the time of the MQP but was still able to carry out some form of employment. Her family doctor wrote that there is no medical evidence in her records that supports the Appellant being unable to work in 2008. For these reasons the Tribunal finds that, it is more likely than not that the Appellant was not incapable regularly of pursuing any substantially gainful occupation by December 31, 2008.

[12] With respect to the allegation that the General Division discriminated against the Applicant, the Tribunal is not persuaded that the Applicant's reliance on the provincial tribunal's documents is appropriate as the Social Security Tribunal is a Federal entity. Further, in the Tribunal's view, there is nothing in the General Division decision that could reasonably lead to the inference that the General Division discriminated against the Applicant in any way. The decision as stated before hinged on the absence of medical documentation that could support a finding that the Applicant suffered from a severe and prolonged disability on or before the MQP. Accordingly, the submission cannot ground the Application.

[13] The Applicant submitted a number of medical documents with the Application. This is not a new facts application, however, the Tribunal notes that all of these medical documents pre-date the General Division hearing of February 4, 2015. In fact, they were created in either 1998 or 1999. These documents were discoverable at the time of the hearing. They do not speak to any aspect of the Applicant's medical condition that was not before the General Division hearing. They add nothing new and cannot form the basis of this Application.

CONCLUSION

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

Hazelyn Ross
Member, Appeal Division