Citation: ***V. H. v. Minister of Employment and Social Development*, 2015 SSTAD 762**

Date: June 19, 2015

File number: AD-15-266

APPEAL DIVISION

Between:

V. H.

Applicant

and

Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills Development)

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* disability pension and claimed that she was disabled by a number of conditions, including misdiagnosed nutritional deficiencies and pain. The Respondent denied her application initially and after reconsideration. The Appellant appealed to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a teleconference hearing and on February 4, 2015 dismissed her appeal.

[2] The Appellant requested leave to appeal to the Appeal Division of the Social Security Tribunal. She argued that the principles of natural justice had been breached as she was not able to present her full case, and that the General Division was not able to fully appreciate the difficulties she had comprehending the questions asked of her because of a language barrier and her mental condition. She also contended that the General Division erred when it stated that she had seen Dr. Sheneva only once, that her depression had not developed only recently and that the growth hormone deficiency was found in a blood test historically.

[3] Prior to deciding whether to grant leave to appeal in this case, written questions were sent to the Appellant. Her responses to those questions were considered.

[4] The Respondent made no submissions. It was also invited to respond to the written questions, but did not.

ANALYSIS

[5] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also 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. v. Canada (Attorney General)*, 2010 FCA 63.

[6] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (this is set out in the Appendix to this decision).

[7] The Appellant presented a number of arguments as grounds of appeal. First, she contended that the principles of natural justice had been breached as she was not able to present her case fully as she did not understand that family members could be called as witnesses and that if leave to appeal was granted, they would testify to support her claim. In an appeal before the Social Security Tribunal it is each party's obligation to present their case. Some claimants choose to retain a representative; others have a family member present to assist and others represent themselves. The Appellant did not allege that she was prevented from having witnesses testify or from having someone assist her. The principles of natural justice are concerned with each party having the opportunity to present their case. If a claimant chooses not to have witnesses testify or not to have assistance at the hearing, this does not breach these principles. While I appreciate that the Appellant's family would like an opportunity to advocate for her, this ground of appeal does not have a reasonable chance of success on appeal.

[8] In answers to written questions, the Appellant also stated that she did not request that an interpreter attend the hearing to assist her because she thought it would be too costly. She also stated that her language barrier was small. The General Division decision, after hearing the evidence, concluded that there was no language barrier whatsoever. Hence, no ground of appeal is disclosed by the contention that the Appellant had a language barrier or needed an interpreter in this case.

[9] The Appellant also argued that because the hearing was conducted by teleconference, the General Division did not appreciate that the Appellant could not properly comprehend the questions asked of her given the language barrier and her mental condition. The General Division decision noted that the Appellant stated that she was not able to do anything, had difficulty making decisions and was not able to function without help. However, the decision also set out that as the hearing went on the Appellant relaxed and was able to raise all the issues she wanted to, and to respond fully to questions asked. It also concluded that there was no

language barrier whatsoever. From this it is clear that the General Division Member was aware that issues regarding the Appellant's ability to present her case due to her limitations had to be addressed in this matter, and did so.

[10] The General Division, as the trier of fact, is obliged to receive evidence from the parties, weigh it and reach an impartial decision based on the evidence and the law. It is not for the decision maker when considering whether to grant leave to appeal to reweigh the evidence to reach a different conclusion (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82).

[11] In addition, the *Social Security Tribunal Regulations* provide (section 21) that hearings may be held in writing, by teleconference, by videoconference or other means of telecommunication, or in person. Section 28 of the Regulations also provides that after all documents are filed with the General Division (or the time to do so has expired) the Income Security Section must make a decision on the basis of the documents and submissions filed, or if it determines that a further hearing is required, send a Notice of Hearing to the parties. On the plain reading of these provisions it is clear that there is no entitlement to an in person hearing for any claimant. The form of hearing is a discretionary decision to be made by the General Division Member. Deference is owed to the Member when making such a decision. The Appellant did not suggest that the General Division made this decision improperly, and there is nothing to indicate that he did. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[12] Finally, the Appellant pointed to factual errors made in the General Division decision, including the number of times she consulted with Dr. Sheneva, when her depression had its onset and when a growth hormone deficiency was revealed by medical testing. In order for such an error to be a ground of appeal under the *Department of Employment and Social Development Act*, it must have been made in a perverse or capricious manner, or without regard to the material before it. The Appellant did not allege that the General Division made these errors in a perverse or capricious manner. The decision summarized the medical evidence and the testimony presented at the hearing. These errors were not made without regard to the material that was before the General Division. Consequently this ground of appeal also does not have a reasonable chance of success on appeal.

CONCLUSION

[13] The Application is refused because the Appellant has not presented a ground of appeal that has a reasonable chance of success.

Valerie Hazlett Parker
Member, Appeal Division