

Citation: *R. P. v. Minister of Employment and Social Development*, 2015 SSTAD 865

Appeal No. AD-15-392

BETWEEN:

R. P.

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: July 10, 2015

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated June 5, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that his disability was not “severe” at his minimum qualifying period of December 31, 2012. The Applicant filed an application requesting leave to appeal on June 17, 2015. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[2] Does the appeal have a reasonable chance of success?

SUBMISSIONS

[3] The Applicant submits that his injuries are severe and permanent. He alleges that he is mentally and physically unfit to do any part-time or full-time work. He invites the Social Security Tribunal to contact his family physician for more information regarding his accident of December 18, 2010. He submits that the General Division made a number of errors.

[4] The Respondent did not file any written submissions.

THE LAW

[5] 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.

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out that the only grounds of appeal are 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.

[7] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

ANALYSIS

[8] It is insufficient to make a general statement that the General Division made errors, without pointing to what those errors might be and how they might have impacted upon the outcome, as otherwise the application for leave to appeal provides no guidance or direction as to what grounds I may consider.

[9] There is no suggestion by the Applicant that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law nor identified any erroneous findings of fact which the General Division may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision. The Applicant has not cited any of the enumerated grounds of appeal.

[10] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some particulars of the error or failing committed by the General Division which fall into the enumerated grounds

of appeal under subsection 58(1) of the DESDA. The application is deficient in this regard and I am not satisfied that the appeal has a reasonable chance of success.

[11] While the Applicant has not raised appropriate grounds of appeal, subsection 58(1) of the DESDA nonetheless enables the Appeal Division to determine if there is an error of law, whether or not the error appears on the face of the record. However, I do not readily see any errors of law which may have been made by the General Division.

[12] The Applicant submits that his family physician can provide more information regarding his accident. He submits that his injuries are severe and permanent and that he is unable to do any part-time or full-time work. 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 the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, and as the Applicant has not identified with sufficient specificity any errors which the General Division may have made in its decision, I am not satisfied that the appeal has a reasonable chance of success and I therefore refuse the application for leave.

CONCLUSION

[13] The application for leave to appeal is refused.

Janet Lew

Member, Appeal Division