

Citation: *S. C. v. Minister of Employment and Social Development*, 2015 SSTAD 853

Date: July 8, 2015

File number: AD-15-366

APPEAL DIVISION

Between:

S. C.

Applicant

and

**Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)**

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on July 8, 2015

REASONS AND DECISION

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

INTRODUCTION

[2] On April 29, 2015, the General Division of the Social Security Tribunal of Canada, (the Tribunal), determined that the Applicant was not entitled to a disability pension as she did not have a mental or physical disability that was “severe and prolonged” as defined by the *Canada Pension Plan*, (CPP). The Applicant has filed an application for leave to appeal, (the Application), with the Appeal Division of the Tribunal.

GROUNDS OF THE APPLICATION

[3] The Applicant sought leave to appeal on the basis that, “Pursuant to s. 58(2) of the *Department of Human Resources and Skills Development Act*,¹ she believed her Application Requesting Leave to Appeal to the Appeal Division has a reasonable chance for success because: she has a severe and prolonged condition of bilateral knee disease as documented by her doctors.”

[4] The Applicant’s stated reasons for the appeal were that “the Chair [meaning the General Division Member] relied too heavily on education and transferable skills and the lack of mitigating factors such as looking for other work.” The Tribunal infers from the reasons the Applicant gave for making the Application that she is alleging that the General Division made an error (or errors) of mixed fact and law.

ISSUE

[5] The Tribunal must decide whether the appeal has a reasonable chance of success.

¹ *The Department of Employment and Social Development Act*.

THE LAW

[6] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.² To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. The Federal Court of Appeal has equated a reasonable chance of success to an arguable case: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[7] The Grounds of Appeal are set out in section 58 of the DESD Act.³ These are the only grounds on which an Applicant may appeal a decision of the General Division.

ANALYSIS

[8] The General Division denied the appeal largely because the Member found that the Applicant quit her job without seeking modified duties, and once she quit, took no steps to obtain alternative employment.⁴ The General Division Member found that the Applicant was relatively young, well educated, had transferable skills and a demonstrated ability to adapt to the needs of the various workplaces, all of which factors would have served the Applicant well

² Sections 56 to 59 of the *Department of Employment and Social Development Act*, (DESD Act). Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

³ **58(1) Grounds of Appeal** –

- 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.

⁴ **13.** After quitting her job in November 2010 with Air Comfort Mechanical Services, the Appellant never returned to any other work. She did not volunteer anywhere, and did not look for any other type of employment. She testified that the clerical work was the lightest job she could find and she didn’t think she could find any other job. She did not go to a vocational rehabilitation assessment as she didn’t think there would be any point in it as she wouldn’t be able to do any work. The Appellant testified she has not taken any steps to look for alternative work as she does not believe she would be able to do anything.

in the workforce. In other words, the Applicant had not established that she did not have retained work capacity.

[9] The Applicant objects that the Member's reliance on her "education and transferable skills and the lack of mitigating factors such as looking for other work", however, the case law demands that the General Division look at these very factors when assessing 'severe disability'. Furthermore, given that the General Division Member found that the Applicant had retained work capacity, the case law required that she establish that her efforts at obtaining and maintaining employment were unsuccessful because of her health condition: *Inclima v. Canada (Attorney General)* 2003 FCA 117. The General Division Member found that by not looking for work the Applicant was caught by this requirement.

[10] The Tribunal has examined the General Division's reasons with a view to deciding whether they disclose a ground that might be successful on appeal. The Tribunal finds no error on the part of the General Division. The General Division Member examined the circumstances that prompted the Applicant to leave her work; her attempts to find alternative work as well as the medical and other evidence that could support a finding of a severe medical disability. This evidence included the Applicant's oral testimony. With this in mind, the Tribunal finds that, overall, the General Division decision is reasonable in that it demonstrates the existence of justification, transparency and intelligibility within the General Division decision-making process.

[11] Further, on considering the totality of the Applicant's submissions, which in essence are little more than a statement of disagreement with the General Division conclusions, the Tribunal finds that the decision was reasonable and falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law and the requirements of the CPP. The Tribunal finds that there is no basis on which to grant the Application as it is not satisfied that the appeal would have a reasonable chance of success.

CONCLUSION

[12] The Application is refused.

Hazelyn Ross
Member, Appeal Division