

**Citation: *L. V. v. Minister of Employment and Social Development*, 2015 SSTAD 895**

**Date: July 21, 2015**

**File number: AD-15-375**

**APPEAL DIVISION**

**Between:**

**L. V.**

**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 21, 2015**

## **DECISION**

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

## **INTRODUCTION**

[2] The Applicant has filed an application (the Application) with the Appeal Division of the Social Security Tribunal (the Tribunal), for leave to appeal the decision of the General Division dated April 9, 2015. The General Division Member found that, on or before the minimum qualifying period (MQP), date, the Applicant was not suffering from a disability that was severe and prolonged as those terms are defined by the *Canada Pension Plan (CPP)*. Accordingly, the Applicant was not entitled to a CPP disability pension.

## **GROUND OF THE APPLICATION**

[3] On her behalf, Counsel for the Applicant submitted that the General Division decision breached the provisions of paragraph 58(1)(c) of the *Department of Employment and Social Development (DESD) Act*. Counsel submitted that the General Division based its decision on multiple erroneous findings of fact, made in a perverse or capricious manner or without regard for the material before it.

## **ISSUE**

[4] In this Application the issue is whether the appeal has a reasonable chance of success.

## **THE LAW**

[5] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.<sup>1</sup> 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*

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<sup>1</sup> 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.”

*Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[6] The Grounds of Appeal are set out in section 58 of the DESD Act.<sup>2</sup> These are the only grounds on which an Applicant may appeal a decision of the General Division.

## **ANALYSIS**

[7] The Applicant has submitted that the General Division Member erred by basing his decision on “multiple erroneous findings of fact” without stating what those findings of fact are. What she has done is to mark the General Division decision at three points. The Tribunal infers that these markings indicate points with which the Applicant takes issue. The marks are placed at paragraphs 12, 29 and 34. All are placed next to statements relating to her marital condition at or around the time the Applicant closed her scuba business. The Tribunal infers that the Applicant takes issue with the General Division’s conclusion that she closed her business in part because of marital difficulties. The Tribunal notes that at paragraph 12, the General Division Member was reporting the Applicant’s testimony.

[8] Other than the marking up of the General Division decision, the Applicant has not put forward any submission as to how the General Division is alleged to have erred. She has not stated what the erroneous findings of fact are. Neither has the Applicant stated in what manner the General Division decision is perverse or capricious nor has the Applicant shown how the decision was made without regard for the facts that were before the General Division.

[9] The Tribunal has examined the General Division decision for possible erroneous findings of fact. On its face, the Tribunal is not persuaded that the decision contains errors of fact. The General Division Member reached his conclusions based on the evidence and oral testimony provided at the hearing. The Tribunal finds that the decision was based largely on a finding that the evidence and testimony indicated that as of the MQP, the Applicant retained

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<sup>2</sup> **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.

work capacity. In the Tribunal's view, even if the General Division had erred with regard to its view of the part that the Applicant's marital difficulties played in her decision to close her business; the error would have had minimal effect on the outcome of the decision. For these reasons the Tribunal is not satisfied that the appeal would have a reasonable chance of success.

## **CONCLUSION**

[10] The Application is refused.

Hazelyn Ross  
Member, Appeal Division