Citation: ***B. W. v. Minister of Employment and Social Development*****, 2015 SSTAD 905**

Date: July 23, 2015

File number: AD-15-380

APPEAL DIVISION

Between:

B. W.

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 23, 2015

DECISION

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

INTRODUCTION

[2] On March 11, 2015, a member of the General Division heard the Applicant's appeal of the Respondent's decision denying him a *Canada Pension Plan* (CPP), disability pension. On May 13, 2015, the General Division issued its decision in the appeal. The General Division found that the Applicant did not qualify for the disability pension. The Applicant has filed an application for leave to appeal the decision of the General Division (the Application), with the Appeal Division of the Social Security Tribunal (the Tribunal).

GROUNDS OF THE APPLICATION

[3] The Applicant takes issue with the General Division's application of the *Villani*[1] case to his appeal. He counters with the cases *Bennett*[2], *Leduc*[3] and *Wong*.[4] These cases relate to the real world context. The Applicant also takes issue with the General Division's analysis of the "prolonged" prong of the CPP paragraph 42(2)(a) test.

ISSUE

[4] The issue before the Tribunal on the Application is whether the Applicant has raised an arguable case.

THE LAW

[5] The *Department of Employment and Social Development* (DESD) *Act* establishes that leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an

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[1] *Villani v. Canada (Attorney General)*, 2001 FCA 248.
[2] *Bennett v. MNHW*, (October 22, 1993), CP 2549 CEB & PG 8690.
[3] *Leduc v. MNHW*, (June 29, 1988), CP 1376 CEB & PG 8546.
[4] *Wong v. MEI* (January 26, 1996) CP 03777, CEB & PG 8599.

appeal before the Appeal Division.[5] 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.

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

ANALYSIS

[7] For the reasons that follow, the Tribunal is not satisfied that the appeal would have a reasonable chance of success.

[8] The Applicant does not specifically state how, in his view, the General Division breached a ground of appeal. He cites the cases but not much more. The Tribunal is left to infer that he is stating that the only way in which he could work is by aegis of a benevolent employer; that the General Division did not consider his entire condition and that the General Division equated the work he does at his parent's home to outside employment. The evidence was that while the Applicant is exchanging services with his parents in return for rent, he has not tried to find employment with an arms-length employer. In these circumstance, notwithstanding his limitations, the Tribunal finds that the General Division did not commit an error in concluding that the Applicant has not met the onus imposed by *Inclima v. Canada (Attorney General)*,2003 FCA 117 to demonstrate that he was unsuccessful in obtaining and maintaining employment by virtue of his health condition. Accordingly, the Tribunal finds that the question of a benevolent employer does not arise.

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[5] 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."

[6] **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.

[9] Furthermore, the cases cited by the Applicant do not assist him. As noted earlier, the Applicant has not stated how the General Division fell afoul of any of the principles set out in the cases. In any event, in *Villani*, applied by the General Division, the Federal Court of Appeal adopted the "real world" approach set out in *Leduc;* and *Bennett* builds on this approach.

[10] *Wong*, which was cited by the Applicant, stands for the proposition that the capacity to perform household tasks does not equate to the capacity for employment. While the Applicant may be equating the maintenance work he does for his parents to household tasks; the Tribunal is satisfied that the General Division did not equate this work to an unqualified ability for work outside of the home. The General Division Member noted the Applicant's limitations in performing this work; nonetheless her determination is based almost entirely on the Applicant's failure to seek alternative employment.

[11] The Applicant also made submissions on the prolonged nature of his disability. He submits that by virtue of the fact that his condition has lasted forty-five months it means that it is severe. The Tribunal finds no error on the part of the General Division. To be considered disabled an applicant must be found to have a disability that is severe and prolonged; not severe or prolonged. The Member considered the treatments and the prognoses of the medical practitioners. Her conclusion that the Applicant does not have a severe disability means that he is not disabled. An arguable case has not been raised in this respect.

CONCLUSION

[12] The Applicant submitted that the General Division came to the wrong conclusion in finding that his medical conditions were not severe and prolonged and that he was not entitled to a CPP disability pension. However, the Tribunal is not satisfied that any of his submissions relate to a ground of appeal that would have a reasonable chance of success. Accordingly, the Tribunal refuses the Application.

Hazelyn Ross
Member, Appeal Division