

Citation: *D. T. v. Minister of Employment and Social Development*, 2015 SSTAD 923

Date: July 27, 2015

File number: AD-15-501

APPEAL DIVISION

Between:

D. T.

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 Applicant claimed that he was disabled by osteoarthritis and other pain-inducing conditions when he applied for a *Canada Pension Plan* disability pension. The Respondent denied the application initially and after reconsideration. The Applicant appealed this decision to the General Division of the Social Security Tribunal of Canada. The General Division held a hearing and on April 13, 2015 dismissed the appeal.

[2] The Applicant filed an Application to Appeal to the Appeal Division. He argued that the General Division made erroneous findings of fact and disregarded some of the evidence, inferred that the Applicant purposely withheld evidence from the Tribunal, failed to consider the cumulative effect of his numerous medical conditions, and erred in concluding that he had refused various forms of treatment despite explanations for so doing.

[3] The Respondent filed no submissions.

ANALYSIS

[4] 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.

[5] 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 may be considered to grant leave to appeal a decision of the General Division (the section is set out in the Appendix to this decision). Hence, I must decide if the Applicant has presented a ground of appeal under the Act that has a reasonable chance of success on appeal.

[6] The Applicant first argued that the General Division made erroneous findings of fact and disregarded some of the evidence. He also contended that the General Division decision made a

negative inference regarding the non-disclosure of this evidence. The General Division is the trier of fact. It is to hear the evidence presented, weigh it and render a decision based on the evidence and the law. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the Tribunal who made the findings of fact (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). The General Division decision summarized the evidence that was presented, and weighed it to reach the decision in this matter. I am not satisfied on the material before me that the General Division made an error of fact in a perverse or capricious manner, or without regard to the material before it. Therefore, this does not raise grounds of appeal that have a reasonable chance of success.

[7] The Applicant also submitted that the General Division erred in not considering the cumulative effect of all of his medical conditions. The Applicant is correct that the decision-maker should consider a claimant's circumstances, in total, to determine whether he is disabled under the *Canada Pension Plan*. In this case, although the medical evidence is summarized separately for each condition, I am not persuaded that the General Division did not consider the cumulative effect of all of the Applicant's disabilities. The decision analyzed the Applicant's testimony regarding his functional abilities in light of all of his conditions. It described the effect of these conditions as "limitations". Accordingly, this ground of appeal does not have a reasonable chance of success on appeal.

[8] Further, the Applicant contended that the General Division did not consider his explanations for refusing various modes of treatment. The decision set out what treatments were offered to the Applicant, and the reasons that he refused them. It made no error in doing so. This ground of appeal also does not have a reasonable chance of success on appeal.

[9] Finally, I note that the General Division decision contained an error of law. The term "prolonged" is defined in the *Canada Pension Plan*. Whether a disability is prolonged is not dependent on whether it is first found to be severe. However, the General Division did not base its decision on whether the Applicant's condition was prolonged. This error was not material to the decision made by the General Division, so leave to appeal is not granted on the basis of this error.

CONCLUSION

[10] The Application is refused for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) The only grounds of appeal are that

- (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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.