

Citation: *S. M. v. Minister of Employment and Social Development*, 2015 SSTAD 933

Date: July 29, 2015

File number: AD-15-382

APPEAL DIVISION

Between:

S. M.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on July 29, 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 for leave to appeal (the Application), a decision of the General Division of the Social Security Tribunal of Canada (the Tribunal). The General Division issued the decision from which leave to appeal is sought on March 18, 2015.

[3] On June 18, 2015, the Tribunal received the completed Application, that is, the Tribunal received an Application completed in the requisite form, a signed Authorisation to Disclose form together with a copy of the decision being appealed all as required by section 24 of the *Social Security Tribunal Regulations, S.O.R./2013-60 as amended by S.C.2013, c. 40, s. 236*. The Applicant advised the Tribunal that a factum would follow. He did so in two places. First after setting out the reasons for the Application and then after setting out the grounds of his appeal. As of the date of issue of these reasons, the Tribunal has not received the said factum or any other document. Being aware of the Tribunal's duty to conduct its proceedings as informally and quickly as possible, this decision is, therefore, being rendered without benefit of any additional argument or submission from the Applicant.

GROUND OF THE APPLICATION

[4] In the Application, the Applicant states as the reason for seeking leave to appeal that he "is a person with a severe and prolonged disability that entitles [him] to disability benefits under the *Canada Pension Plan*". As grounds of the appeal, the Applicant submitted that the General Division decision breached the provisions of subsection 58(1) of the *Department of Employment and Social Development (DESD) Act* in that the General Division breached natural justice; and its decision contained errors of law, whether those errors appear on the face of the record; and erroneous findings of fact that it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

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

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 Division¹. 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.

ANALYSIS

[7] In order for the Tribunal to grant leave to appeal, the Tribunal must be satisfied that the appeal would have a reasonable chance of success. This means that I must first find that at least one of the grounds of the Application relate to a ground of appeal that would have a reasonable chance of success if the matter were to proceed to a hearing. For the reasons set out below the Tribunal is not satisfied that the appeal would have a reasonable chance of success.

[8] First, the grounds cited by the Applicant as grounds of the Application do not relate to a ground of appeal. In stating that he is a person with a severe and prolonged disability who is entitled to a *Canada Pension Plan* (CPP) disability pension, the Applicant is doing no more than stating his opinion. The Applicant has not put forward any submission or argument that relates to a ground of appeal. Thus, there is no basis on which the Tribunal could grant the application.

[9] Secondly, the Applicant set out the provisions of the DESD Act, subsection 58(1) as the grounds of the appeal; however, he made no submissions or argument as to how the General Division might have breached any of the provisions of the section. Thus, the Tribunal

¹ 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.”

is unable to satisfy itself that the Applicant has raised a ground of appeal that would have a reasonable chance of success.

[10] Notwithstanding the Tribunal's finding that the Application does not disclose a ground of appeal, the Tribunal notes that paragraph 58(1)(b) provides for a finding that the General Division erred in law, whether or not the error appears on the face of the record. With this in mind the Tribunal examined the General Division decision and the Tribunal documents with a view to finding whether they disclose an error or errors that do not appear on the face of the record. In so doing, the Tribunal finds that the General Division did, in fact, err when it stated that the Applicant underwent shoulder surgery on January 26, 2010. The record indicates that the surgery actually took place in January 2000. The question is whether the mistake is so material as to ground the appeal. The Tribunal finds that it is not.

[11] In the Tribunal's view, had the error not been made the General Division decision would not have been altered so significantly as to result in a finding in favour of the Applicant. The General Division decision is founded on the Member's findings that the Applicant did not meet the criteria for severe and prolonged on or before his minimum qualifying period of December 31, 2001 (MQP). To come to this finding the General Division examined the evidence and testimony analysing them against accepted criteria. This included applying the *Villani* factors;² addressing all of the Applicant's medical conditions, including his mental health condition; and examining his retained capacity to work in the context of his attendance at school. The Tribunal finds that overall, the General Division came to a decision that is reasonable in that it demonstrates the existence of justification, transparency and intelligibility within its decision-making process. Further, on considering the decision as a whole, the Tribunal finds that the General Division 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.

² *Villani v. Canada (A.G.)* 2001 FCA 248.

CONCLUSION

[12] The Applicant seeks leave to appeal on the basis that the General Division breached the provisions of CPP subsection 58(1). In light of the foregoing, the Tribunal is not satisfied that the appeal would have a reasonable chance of success.

[13] The Application is refused.

Hazelyn Ross
Member, Appeal Division