

**Citation: *B. C. v. Minister of Employment and Social Development*, 2015 SSTAD 947**

**Date: July 31, 2015**

**File number: AD-15-421**

**APPEAL DIVISION**

**Between:**

**B. C.**

**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 Appellant applied for a *Canada Pension Plan* disability pension. She claimed that she was disabled by injuries from a motor vehicle accident which also aggravated other physical conditions. The Respondent denied her claim initially and after reconsideration. The Appellant appealed the reconsideration decision to the office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal of Canada on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and dismissed the appeal.

[2] The Appellant sought leave to appeal to the Appeal Division of the Tribunal. She argued that the General Division disregarded some of the evidence before it, made factual errors, and she provided an explanation for some of the statements made in the decision.

[3] The Respondent filed no submissions.

### ANALYSIS

[4] 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 (this is set out in the Appendix to this decision). Therefore I must decide if the Appellant has presented a ground of appeal that has a reasonable chance of success on appeal.

[6] The Appellant presented a number of arguments to support her contention that the General Division made its decision without regard to the material before it. First, she provided

explanations for some of the findings of fact made in the decision. For example, she explained that she did not consult with her family doctor until approximately one month after the car accident because he was on holiday, and that she spent hours playing games on her computer because she was in pain and had difficulty walking. It is not clear whether this evidence was presented at the General Division hearing. If it was, I am not satisfied that the General Division decision erred when it did not set out all of this evidence in the written decision. It is not necessary for a written decision to include each and every piece of evidence that was presented at the hearing, as the decision maker is presumed to have considered it all (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82). If this information was not presented at the General Division hearing, the decision maker made no error as it could not have been considered in making the decision. These are not grounds of appeal that have a reasonable chance of success on appeal.

[7] The Appellant also submitted that she did not produce all of the medical evidence that may have been available. For example, the Appellant brought copies of some diagnostic images with her to the hearing, stated that some records from her doctors were not available as they had retired, and she believed that the Government would have been able to obtain her medical information without cost to her. It is incumbent on the parties to a disability claim to produce evidence to support their claim. It is not incumbent on the Respondent to obtain or present evidence on behalf of another party. The role of the Tribunal is not to gather evidence, but to hear the evidence presented by the parties, weigh it and render an impartial decision based on the evidence and the law. Thus, the fact that the Appellant did not produce all of the evidence that she might have to support her claim is not a ground of appeal that has a reasonable chance of success on appeal.

[8] Further, the Appellant pointed to a factual error made in the decision when it referred to a “lateral disc protrusion on the right shoulder” as the disc protrusion was in her neck and not her shoulder. The General Division decision summarized the medical evidence that was before it, including conditions affecting both her neck and her shoulder. It also considered the effect of these conditions on her capacity to engage in a substantially gainful occupation. Although the General Division erred with respect to its description of the disc protrusion I am not satisfied that the error was material to the decision. It was not made in a perverse or capricious manner,

or without regard to the material before it. This ground of appeal does not have a reasonable chance of success on appeal.

[9] The Appellant pointed to another factual error in the decision; the decision stated that it was possible to infer that the family physician did not think her condition so serious that it warranted a referral to a pain management program. However, the Appellant was treated by Dr. Bentley who was a pain management specialist. I am not satisfied that this error was made in a perverse or capricious manner or without regard to the material before the General Division. The decision also refers to the treatment that the Appellant received from Dr. Bentley and the referrals he made. I am satisfied that this evidence was considered and weighed in reaching the decision in this matter. This is not a ground of appeal that has a reasonable chance of success on appeal.

[10] Finally, the Appellant disagreed with some statements made in the decision. For example, she stated that in her view her condition was severe, and her neck issue was prolonged. She also contended that she took responsibility for her health care by seeing a chiropractor for at least two years prior to the motor vehicle accident. While I understand the Appellant's position on these matters, it is for the General Division, after hearing the evidence and weighing it to decide if she has a severe and prolonged disability under the *Canada Pension Plan*. These arguments are not grounds of appeal that have a reasonable chance of success on appeal.

## **CONCLUSION**

[11] The Application is refused as the Appellant has not presented a ground of appeal that has a reasonable chance of success on appeal.

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.