

Citation: *I. S. v. Minister of Employment and Social Development*, 2015 SSTAD 983

Date: August 17, 2015

File number: AD-15-333

APPEAL DIVISION

Between:

I. S.

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 applied for a *Canada Pension Plan* disability pension and claimed that he was disabled by mental illness. The Respondent found that the Applicant was disabled, and granted him a disability pension. It found the Applicant was disabled in 2003. Under the *Canada Pension Plan* a claimant can not be found to be disabled more than fifteen months prior to the date of their application, so in this case, the Applicant was deemed to be disabled in December 2009.

[2] The Applicant appealed this decision, claiming that he was incapable of forming or expressing an intention to make an application, so further retroactivity of payment of the pension should be granted to him pursuant to section 60 of the *Canada Pension Plan* (this is an exception to the fifteen month rule). The Respondent denied this request initially and after reconsideration. The Applicant appealed this decision to the Office of the Commissioner of Review Tribunals. Pursuant to the *Jobs, Growth and Long-term Prosperity Act*, the appeal was transferred to the General Division of the Social Security Tribunal. On April 8, 2015 the General Division dismissed the appeal.

[3] The Applicant sought leave to appeal to the Appeal Division of the Social Security Tribunal. In his letters seeking leave to appeal he set out the grounds of appeal in section 58 of the *Department of Employment and Social Development Act*.

[4] The Respondent filed no submissions.

ANALYSIS

[5] 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.

[6] 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 (see the Appendix to this decision). I must therefore decide if the Applicant has presented a ground of appeal that has a reasonable chance of success on appeal.

[7] The Applicant submitted that the General Division had breached the principles of natural justice or improperly exercised its jurisdiction as a ground of appeal. Natural justice is concerned with ensuring that parties to a hearing have the opportunity to fully present their case, meet the case presented against them, and have a decision made by an impartial decision maker based on the law and the evidence. The Applicant provided no information that indicated that the principles of natural justice had been breached in any way. Similarly, he did not provide anything from which I could conclude that the General Division improperly exercised its jurisdiction. This argument therefore does not establish any ground of appeal under the Act.

[8] The Applicant also contended that the General Division made an erroneous finding of fact, but provided nothing to substantiate this claim. The bare allegation that the General Division made such an error is insufficient to establish a ground of appeal that has a reasonable chance of success on appeal.

[9] Finally, the Applicant alleged that the General Division erred in law. I have reviewed the decision. It correctly sets out the law at issue and applied it to the facts of this case. Hence, this is also not a ground of appeal.

[10] I agree with the Applicant that mental illness can be disabling. That is different, however, from a finding of incapacity to form or express an intention to apply for a *Canada Pension Plan* disability pension. Although I am sympathetic to the Applicant's circumstances, the Applicant has not presented any ground of appeal that has a reasonable chance of success on appeal.

[11] For these reasons, the application is refused.

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.