**Citation:** ***A. S. v. Minister of Employment and Social Development,*** **2015 SSTAD 985**

**Date: August 17, 2015**

**File number: AD-15-830**

**APPEAL DIVISION**

**Between:**

**A. 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 Appellant applied for a *Canada Pension Plan* disability pension. He claimed that he was disabled as a result of knee injuries and chronic pain. The Respondent denied his application initially and after reconsideration. The Appellant appealed this decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing by teleconference and on June 23, 2015 dismissed the appeal.

[2] The Appellant sought leave to appeal to the Appeal Division of the Tribunal. He argued that he was heavily medicated over the last year and so did not contact all of his doctors to provide additional evidence to support his claim. He would now like to do so. In addition, he contended that the decision maker could not make a decision on his matter after a teleconference hearing without seeing him.

[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).

[6] The Appellant first argued that he did not present all of the evidence that might have been available to support his case as he did not request reports from all of his doctors. He would

like to be able to do that. This submission does not point to any error of law or in fact made by the General Division or to any breach of natural justice. He did not contend that he was prevented from doing this by the Tribunal, or that he was not given the opportunity to do so. It is incumbent on parties to present their entire case at the General Division hearing. The promise to present more evidence after this hearing is not a ground of appeal that can be considered under the *Department of Employment and Social Development Act*. Leave to appeal therefore cannot be granted on this basis.

[7] The Appellant also contended that the decision maker could not properly assess him and his claim in the absence of seeing him. The *Social Security Tribunal Regulations* provide (section 21) that hearings may be held in writing, by teleconference, by videoconference or other means of telecommunication, or in person. In addition, section 28 of the Regulations provides that after all documents are filed with the General Division (or the time to do so has expired) the Income Security Section must make a decision on the basis of the documents and submissions filed, or if it determines that a further hearing is required, send a Notice of Hearing to the parties. On the plain reading of this provision it is clear that there is no entitlement to a hearing where a claimant can be seen by the decision maker.

[8] The Supreme Court of Canada has also addressed the issue of whether a claimant is entitled to an in person hearing. After analysing the law, it has consistently decided that although a party to a proceeding is entitled to be heard, this does not always mean that he must be heard in person, or be physically seen by the decision maker (see *Singh v. Minister of Employment and Immigration* [1986] 1 SCR 177, and Baker *v. Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817). Hence, the mere fact that the General Division hearing was not conducted in a way that the Applicant could be seen by the decision maker is not a ground of appeal under section 58 of the Act.

**CONCLUSION**

[9] The Application is refused as the Applicant did not present 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.