

**Citation: *W. M. v. Minister of Employment and Social Development*, 2015 SSTAD 986**

**Date: August 17, 2015**

**File number: AD-15-405**

**APPEAL DIVISION**

**Between:**

**W. M.**

**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 she was disabled by fibromyalgia, mental illness and other conditions when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. On April 1, 2013 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 an in person hearing and on May 28, 2015 dismissed the Applicant's appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Social Security Tribunal. In the letter requesting leave to appeal she set out her work history both before and after the Minimum Qualifying Period (the date by which an applicant must be found to be disabled in order to receive a *Canada Pension Plan* disability pension). She also contended that she was diagnosed with depression a number of years ago, and not just by Dr. Abidibi more recently. Finally, she repeated conclusions reached by medical practitioners that supported her claim.

[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 (see the Appendix to this decision).

Hence, I must decide if the Applicant has presented a ground of appeal set out in section 58 of the Act that has a reasonable chance of success.

[6] The Applicant set out a summary of her work experience, including her return to work in 2005 and thereafter so that she could provide for her family. This evidence was before the General Division at the hearing and considered by it when it made the decision. The Appellant did not allege that any error was made with respect to this evidence or that it was not properly considered. The repetition of evidence is not a ground of appeal. Similarly, the repetition of medical evidence that was before the General Division is not a ground of appeal under the Act.

[7] The Applicant also argued that she had been diagnosed with depression some time ago, and not just recently by Dr. Abidibi. This was set out in the medical evidence that was before the General Division. The Federal Court of Appeal has decided that a Tribunal is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence need not be mentioned in the written decision (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). It is clear on reading the decision that the General Division considered all of the Applicant's circumstances in reaching the decision in this matter. The decision was made after analyzing the oral and written evidence, and considering whether the Applicant was disabled under the *Canada Pension Plan* at the relevant time. Therefore, I am not satisfied that this argument is a ground of appeal that has a reasonable chance of success on appeal.

## **CONCLUSION**

[8] The Application is refused because the Applicant 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.