

**Citation: *S. N. v. Minister of Employment and Social Development*, 2015 SSTAD 991**

**Date: August 19, 2015**

**File number: AD-15-831**

**APPEAL DIVISION**

**Between:**

**S. N.**

**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 physical injuries and mental illness that resulted from a motor vehicle accident when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her claim initially and after reconsideration. The Applicant 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 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and on May 21, 2015 dismissed the appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. She argued that the car accident left her with both physical and psychological impairments, and that the General Division failed to understand the severity of her overall physical and psychological condition. She also contended that she had been compliant with all treatment recommendations.

[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 also decided 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 under the Act that may have a reasonable chance of success on appeal.

[6] The General Division decision contained a detailed summary of the medical evidence that was presented at the hearing. Many of the medical reports contained treatment recommendations. The General division decision found as a fact that the Applicant had not complied with all of the treatment recommendations. To support her application for leave to appeal the Applicant contended that she was compliant with all treatment recommended. It is for the General Division to receive the evidence from the parties and make findings of fact. The Appeal Division, in deciding whether to grant leave to appeal is not to reweigh the evidence to reach a different conclusion. I am thus not satisfied that this ground of appeal has a reasonable chance of success on appeal.

[7] The Applicant also argued that the General Division failed to understand the severity of her physical and psychological condition. The decision analysed the Applicant's physical limitations and abilities in some detail. It also mentioned her psychological diagnosis. In *Bungay v. Canada (Attorney General)*, 2011 FCA 47 the Federal Court of Appeal concluded that when determining if a claimant is disabled under the *Canada Pension Plan* all of her conditions must be considered, not just the main one. It is not clear to me that the General Division considered the cumulative effect of the Applicant's physical and psychological conditions in this case. Accordingly, this ground of appeal may have a reasonable chance of success on appeal.

[8] Finally, the General Division decision summarized many of the conflicting medical reports. It relied on some of these reports in reaching its decision. It did not, however, explain why greater weight was given to these reports and not others. The Supreme Court of Canada, in *R. v. Sheppard* (2002 SCC 26) stated that one of the purposes of written reasons is to explain to parties why the decision was made. This purpose may not have been achieved in this case without some explanation regarding how the medical evidence was weighed. This may be an error in law, which is a ground of appeal that may have a reasonable chance of success on appeal.

## **CONCLUSION**

[9] The Application is granted for the reasons set out above.

[10] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

*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.