

Citation: *K. S. v. Minister of Employment and Social Development*, 2015 SSTAD 966

Appeal No. AD-15-522

BETWEEN:

**K. S.**

Applicant

and

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: August 7, 2015

## **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division dated April 17, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not “severe” at her minimum qualifying period of December 31, 2013. The Applicant’s representative filed an application requesting leave to appeal on her behalf on July 15, 2015, although the submissions themselves were very clearly written by the Applicant. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

## **ISSUE**

[2] Does the appeal have a reasonable chance of success?

## **SUBMISSIONS**

[3] The Applicant described her work and medical history. She confirmed that she has seen a rheumatologist and that she has been diagnosed with fibromyalgia. She worked “very light jobs” in the farming industry. The Applicant explained that her employer generally accommodated her anxiety but if she had to work in certain conditions, she was unable to work the following day. She added that she had not been clear when she advised that she had been unable to find any light jobs, and that in fact, while she thought about some jobs, eventually determined that she was unable to contemplate working even light jobs, given her medical condition.

[4] The Applicant advised that she has been struggling with anxiety since 1990, so queries how the General Division could have concluded that her disability is not severe and prolonged.

[5] The Applicant advised that she had expected to receive some assistance with her appeal before the General Division, but she was involved in a “big accident” on June 15, 2015 and therefore was unable to make her appointment and get any assistance.

[6] The Respondent did not file any written submissions.

## **THE LAW**

[7] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out that the only grounds of appeal are the following:

- (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.

[9] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

## **ANALYSIS**

[10] The Applicant described her work and medical history, including her anxiety dating back to 1990. She also advised that she has seen a rheumatologist, likely in response to the decision of the General Division. The General Division indicated that the Applicant's failure to produce opinions from a neurologist or rheumatologist factored into its determination that she had not established a severe disability. The Applicant also clarified her earlier advice that she had been unable to find light work. These do not set out any grounds of appeal under subsection 58(1) of the DESDA.

[11] The Applicant was involved in an accident on June 15, 2015 and therefore had been unable to make an appointment with an individual from whom she expected some assistance. It seems that the Applicant is suggesting that she should have been entitled to an adjournment so that she could properly present her case. The General Division rendered its decision on April 17, 2015. I do not accept any submission or proposition that the Applicant should have been entitled to an adjournment or that the General Division erred by not granting it. For one, the Applicant has never formally requested an adjournment. Secondly, the Applicant does not appear to have ever notified the General Division that she would be consulting a representative, nor does the General Division appear to have ever been aware of her intentions in this regard. Finally, by the time the Applicant had arranged to meet with a representative, the timeframe for providing any documents or submissions had long passed. (The Social Security Tribunal advised the parties in a letter dated January 12, 2015, that they had until February 16, 2015 to provide any additional documents and any responses to questions from the General Division, and until March 18, 2015 to provide any responses.)

[12] The Applicant made general reference to the grounds of appeal under subsection 58(1) of the DESDA, but it is insufficient to make a general statement that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision, or that it made errors of law or erroneous findings of fact, without specifying what those errors might be and how they might have impacted upon the outcome, as otherwise the application for leave to appeal provides no guidance or direction as to how I am to assess whether the appeal has a reasonable chance of success.

[13] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some particulars of the error or failing committed by the General Division which fall into the enumerated grounds of appeal under subsection 58(1) of the DESDA. The application is deficient in this regard and I am not satisfied that the appeal has a reasonable chance of success.

[14] While the Applicant has not raised appropriate grounds of appeal, subsection 58(1) of the DESDA nonetheless enables the Appeal Division to determine if there is an error of

law, whether or not the error appears on the face of the record. However, I do not readily see any errors of law which may have been made by the General Division.

[15] For the purposes of a leave application, I am restricted to considering only those grounds of appeal which fall within subsection 58(1) of the DESDA. The subsection does not permit me to undertake a reassessment of the evidence. As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, and as the Applicant has not identified with sufficient specificity any errors which the General Division may have made in its decision, I am not satisfied that the appeal has a reasonable chance of success and I therefore refuse the application for leave.

### **CONCLUSION**

[16] The application for leave to appeal is refused.

*Janet Lew*

Member, Appeal Division