

Citation: *Z. Y. v. Minister of Employment and Social Development*, 2015 SSTAD 995

Date: August 19, 2015

File number: AD-15-845

APPEAL DIVISION

Between:

Z. Y.

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 he was disabled by a heart condition and mental illness when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his application initially and after reconsideration. The Applicant appealed 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 June 11, 2015 dismissed the appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. In the Application Requesting Leave to Appeal to the Appeal Division the Applicant summarized his work and medical history, and contended that the General Division did not place sufficient weight on his testimony regarding his medical conditions in the absence of medical reports at the relevant time.

[3] The Respondent made 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 (this is set out in the Appendix to this decision). Therefore, I must decide if the Applicant has presented a ground of appeal under section 58 of the Act that may have a reasonable chance of success on appeal.

[6] In the application requesting leave to appeal, the Applicant summarized his work and medical history. This evidence was before the General Division when it made its decision. The repetition of this evidence is not a ground of appeal under the Act.

[7] The Applicant also contended that the General Division decision erred as it should have placed more weight on the Applicant's testimony regarding his medical conditions at the time of the Minimum Qualifying Period (the date by which a claimant must be found to be disabled to receive the disability pension). He argued that this was especially so as this was the best evidence available because there was no medical evidence for that time.

[8] This argument suggests that the General Division made an error of fact. Under section 58(1) of the Act, in order for an error of fact to be a ground of appeal, it must have been made in a perverse or capricious manner, or without regard to the material before it. The Applicant did not suggest that any factual error was made in this manner, or that the decision was made without regard to the evidence before it.

[9] The General Division is the trier of fact. As such, it is to receive the evidence of the parties, weigh it and render a decision based on the facts and the law. The General Division did this. The tribunal deciding whether to grant leave to appeal ought not to reweigh the evidence and substitute its view of the persuasive value of the evidence for that of the Tribunal who made the findings of fact (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82). Therefore, I find that this argument does not raise a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is refused as 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.