

Citation: *J. C. v. Minister of Employment and Social Development*, 2015 SSTAD 996

Date: August 19, 2015

File number: AD-15-837

APPEAL DIVISION

Between:

J. C.

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 ongoing pain and problems using his left leg after an injury in his application for a *Canada Pension Plan* disability pension. The Respondent denied the 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 February 28, 2015 dismissed the Applicant's appeal.

[2] The Applicant asked for leave to appeal to the Appeal Division of the Tribunal. He contended that he was now having further x-rays, and that it seemed the no one was listening to him or his doctors.

[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 (the section is set out in the Appendix to this decision). Therefore, I must decide if the Appellant has presented a ground of appeal under section 58 of the Act that has a reasonable chance of success on appeal.

[6] The Applicant wrote in the Application Requesting Leave to Appeal to the Appeal Division that he was having x-rays on his leg, back, arm, etc. and that he continued to be in

pain. The promise of new evidence is not a ground of appeal in section 58 of the Act. Accordingly, leave to appeal cannot be granted on the basis that there may be new evidence regarding the Applicant's condition.

[7] The Applicant also contended that no one seemed to be listening to him or his doctors. He did not provide any details of any evidence that he was not able to present to support his case. The General Division decision summarized the medical evidence and the Applicant's testimony at the hearing. This evidence was considered and weighed to reach the decision. The Appellant's argument does not point to any error made by the General Division or to any breach of the principles of natural justice. Therefore it is also not a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[8] The Application is refused because the Applicant did not present a ground of appeal under section 58 of the Act 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.