

Citation: *A. T. v. Minister of Employment and Social Development*, 2015 SSTAD 997

Date: August 19, 2015

File number: AD-15-836

APPEAL DIVISION

Between:

A. T.

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 applied for a *Canada Pension Plan* disability pension. She claimed that she was disabled by numerous medical conditions including pain and limited use of her left leg after cancer treatment, high blood pressure and mental illness. The Respondent denied her claim initially and after reconsideration. She appealed to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a teleconference hearing and on June 28, 2015 dismissed the appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. She argued that the General Division did not properly consider her conditions, including the melanoma found on her left leg, mental illness and her high blood pressure. In addition, she argued that if she had been able to give oral testimony she would have proven that she was disabled under the *Canada Pension Plan*.

[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 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). Therefore, I must decide if the Applicant has put forward a ground of appeal that may have a reasonable chance of success on appeal.

[6] The Appellant submitted that the General Division did not properly consider her conditions when it concluded that she did not suffer from a severe disability under the *Canada Pension Plan*. She did not provide any specifics regarding what evidence was not considered. The General Division decision summarized the written evidence and the oral testimony that was presented at the hearing. I am not satisfied that the General Division failed to consider the material before it.

[7] In addition, with this ground of appeal, the Applicant has essentially asked the Appeal Division of the Tribunal to reweigh the evidence that was before the General Division to reach a different conclusion. The Federal Court stated clearly in *Misek v. Canada (Attorney General)*, 2012 FC 890 that it is not for the Member deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the decision. Therefore, I am not satisfied that this ground of appeal has a reasonable chance of success on appeal.

[8] The Applicant also contended that if she had been able to provide oral testimony she would have proven that she was disabled. She did not allege that she was prevented from giving her evidence by the conduct of the General Division Member or anyone else who attended the hearing. She did not provide any examples of evidence that she would have given but did not or could not. Therefore, this ground of appeal also does not have a reasonable chance of success on appeal.

[9] If the Applicant meant to argue that she could not present her case fully because the hearing was conducted by teleconference and not in person, she still would not be granted leave to appeal on this basis. Section 21 of the *Social Security Tribunal Regulations* provides that hearings may be conducted in writing, by teleconference, videoconference or other means of telecommunication, or in person. No claimant has a right to a particular form of hearing. The form of hearing is to be decided by the Member who has carriage of the matter. The Applicant did not allege that the General Division Member erred in deciding what form this hearing would take. Thus, this is not a ground of appeal that would have a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is refused because the Applicant did not present a ground of appeal that may have 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.