

Citation: *P. J. v. Minister of Employment and Social Development*, 2015 SSTAD 1021

Date: August 27, 2015

File number: AD-15-874

APPEAL DIVISION

Between:

P. J.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on August 27, 2015

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

INTRODUCTION

[2] In a decision issued July 17, 2015, the General Division of the Social Security Tribunal of Canada, (the Tribunal), found that the Applicant did not meet the criteria for payment of a *Canada Pension Plan* (CPP) disability pension. The Applicant seeks leave to appeal the decision, (the Application).

GROUND OF THE APPLICATION

[3] The Applicant's minimum qualifying period date, (MQP), is December 31, 2011. His Counsel submitted that he became disabled prior to this date and remains so to date. Counsel for the Applicant also submits that the General Division did not place appropriate weight on the medical reports that were before it. The Tribunal concludes that Counsel's submissions are based on 58(1)(c) of the *Department of Employment and Social Development (DESD) Act*, namely, that the General Division based its decision on an erroneous finding of fact which it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[4] The issue that the Tribunal must decide is whether the appeal has a reasonable chance of success.

THE LAW

[5] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.¹ To grant leave, the Appeal Division must be

¹ Sections 56 to 59 of the DESD Act. Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal."

satisfied that the appeal would have a reasonable chance of success². In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 as well as in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case.

[6] There are only three grounds on which an applicant may bring an appeal. These grounds are set out in section 58 of the DESD Act. They are,

- (1) a breach of natural justice;
- (2) that the General Division erred in law; and
- (3) the General Division based its decision on an error of fact made in a perverse or capricious manner or without regard for the material before it.³

ANALYSIS

[7] In order to grant leave to appeal the Tribunal must be satisfied that the appeal would have a reasonable chance of success. This means that the Tribunal must first find that, were the matter to proceed to a hearing,

- (a) at least one of the grounds of the Application relate to a ground of appeal; and
- (b) there is a reasonable chance that the appeal would succeed on this ground.

² The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

³ **58(1) Grounds of Appeal –**

- 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.

For the reasons set out below the Tribunal is not satisfied that this appeal would have a reasonable chance of success.

The Alleged Errors

[8] As stated earlier, the Tribunal concludes that Counsel for the Applicant was alleging that the General Division decision was based on errors of fact. In Counsel's submission, the Applicant's medical and mental conditions prior to the MQP were of such a nature that they brought him within the CPP definition of "severe" disability. Counsel submitted that the medical evidence supported such a finding and that in its decision the General Division failed to give significant weight to that evidence, notably that of Dr. Samuels.

[9] The following is the main portion of the submissions of Counsel for the Applicant:

According to the recent decision dated July 17, 2015 the Tribunal determined that the medical evidence on file does not establish that the appellant's overall medical condition was severe prior to the MQP. The decision avers that while Mr. P. J. has limitations with his health conditions, he does not have a severe disability that would prevent him from partaking in gainful employment.

Contrary to the Tribunal's decision, it remains this Firm's contention that Mr. P. J.'s physical medical conditions and psychological impairment are both severe and prolonged in nature prior and render him unemployable in any capacity. The medical evidence on file supports the severity of the appellant's overall medical condition, which consists of a chronic low back pain and degenerative disc disease, with limited movement in all directions and spasms down to his legs, bladder incontinence and depression, which disables him from partaking in activities of daily living. He also has functional limitations of standing, sitting, walking, lifting, reaching and bending and difficulty with memory and concentration, due to his depressed state of mind and poor sleep caused by his severe pain, which is a significant barrier to him returning to any form of gainful employment since December 2011 and continuously thereafter.

It is respectfully submitted that the medical evidence on file from the appellant's primary treating practitioners, most notably Dr. Samuels, was not given significant weight when rendering a decision in this claim. At this time we kindly request a Leave to Appeal as we remain confident in our belief that the medical evidence on file confirms our position that Mr. P. J. is totally and permanently disabled and that his overall physical and psychological conditions are both severe and prolonged in nature." (AD-1 application for leave to appeal)

[10] In the Tribunal's view, the submissions of Counsel for the Applicant are no more than statements disagreeing with the outcome of the General Division hearing and expressing the continued belief that the Applicant meets the CPP definition of severe and prolonged disability. While Counsel for the Applicant challenges the weight that the General Division placed on the medical evidence, Counsel has not set out how the General Division erred in law; or in fact; or whether or not a breach of natural justice has occurred and in what manner. Essentially, the submissions invite the Appeal Division to reweigh the evidence which is not its function.

[11] Further, weighing evidence is within the purview of the General Division. The decision shows that the General Division Member considered and addressed both the objective medical evidence as well as the Applicant's oral testimony about his medical conditions before reaching a conclusion. Dr. Samuel's reports and medical conclusions and opinions are specifically addressed at paragraph 39 of the General Division decision. The General Division member goes on to analyse the content of the other medical reports in the context of determining whether or not the Applicant had a severe disability on or before the MQP. The Member did so at paragraphs 40-42 of the decision. The fact that the Applicant disagrees with the conclusions that the General Division Member comes to about the reports of Dr. Samuels and the other medical reports is not sufficient to ground an appeal.

CONCLUSION

[12] Counsel for the Applicant submitted that the Applicant is disabled within the meaning of the CPP. Counsel also submitted that the General Division did not give appropriate weight to the medical evidence before it in coming to its decisions and that the medical evidence supported a finding of severe disability. For the reasons set out above the Tribunal is not persuaded that Counsel's submissions disclose a ground of appeal that would have a reasonable chance of success. Accordingly, the Application is refused.

Hazelyn Ross
Member, Appeal Division