

Citation: *B. T. v. Minister of Employment and Social Development*, 2015 SSTAD 1002

Date: August 20, 2015

File number: AD-15-846

APPEAL DIVISION

Between:

B. 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. He claimed that he was disabled by osteoarthritis, neuropathy and other physical ailments. 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 teleconference hearing and on May 25, 2015 dismissed the Applicant's appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. He argued that the General Division improperly weighed his evidence and the medical evidence, misinterpreted case law, and erred in law.

[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 can be considered to grant leave to appeal a decision of the General Division (this is set out in the Appendix to this decision). Hence, I must determine 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] The Applicant presented a number of grounds of appeal. First, he contended that the General Division did not properly weigh his evidence and the medical evidence. The General

Division is the trier of fact. As such, it is to hear the evidence of the parties, weigh it and render a decision based on the facts and the law. It is not for the Tribunal when deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the General Division decision (*Misek v. Canada (Attorney General)*, 2012 FC 890). Therefore, this is not a ground of appeal under the Act that has a reasonable chance of success on appeal.

[7] One ground of appeal set out in section 58 of the Act is that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it. The Applicant argued that the General Division erred in this regard by not considering the evidence that was before it. The decision contained a summary of the evidence. It did not, however, analyse this evidence or explain how the evidence was weighed to reach the decision. Consequently it is not clear if the General Division considered all of the evidence that was presented at the hearing. This ground of appeal may have a reasonable chance of success on appeal.

[8] The Applicant also argued that the General Division erred as it misinterpreted and misapplied the decision in *Inclima v. Canada (Attorney General)*, 2003 FCA 117. The General Division decision correctly set out one of the principles from this decision and other decisions of the Federal Court of Appeal that were relevant to this matter. It did not, however, apply these principles to the facts of the matter before it. This may be an error, and is a ground of appeal that may have a reasonable chance of success on appeal.

[9] The Supreme Court of Canada, in *R. v. Sheppard* (2002 SCC 26), set out three main functions for reasons for a decision: to tell the parties why the decision was made, to provide public accountability of the decision and to permit effective appellate review. In this case, it is not clear that the reasons for the General Division decision accomplished this. The decision at hand summarized the evidence, but did not set out how the evidence was weighed, or whether some evidence was given more weight than other evidence (except for one medical report). Relevant decisions of the Federal Court of Appeal were cited, but the principles from them were not applied to the facts at hand. Consequently it is difficult to understand why the decision was made. This may be an error of law, and so leave to appeal is granted on this basis also.

[10] Finally, the Applicant argued that the General Division erred in law as it failed to find the Applicant disabled. The Applicant's disagreement with the outcome of his appeal at the General Division does not, by itself, point to any error made by the General Division. This is not a ground of appeal that may have a reasonable chance of success on appeal.

CONCLUSION

[11] The Application is granted as the Applicant put forward grounds of appeal that may have a reasonable chance of success on appeal.

[12] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

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.