

Citation: *A. S. v. Minister of Employment and Social Development*, 2015 SSTAD 1008

Date: August 24, 2015

File number: AD-15-856

APPEAL DIVISION

Between:

A. S.

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 she was disabled by a number of physical and mental conditions when she applied for a *Canada Pension Plan* disability pension. 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 of Canada pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a teleconference hearing that the Applicant did not participate in, and on April 9, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. She argued that she did not have a chance to file relevant documents with the Tribunal, which she included with the leave to appeal application, and that she was not able to attend the hearing or to telephone the Tribunal on the date scheduled for the hearing because of her illness. She also provided an explanation for one of the questions that the General Division decision posed in its decision.

[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). I must therefore decide if the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal.

[6] The Applicant requested leave to appeal on the basis that she was unable to file documents with the Tribunal that supported her claim. She mistakenly filed the wrong documents, which were accepted by the Tribunal. From a review of the General Division decision it appears that the Applicant requested an extension of time to file documents. This request was not granted as it was not clear to the General Division Member that the documents would be relevant to the claim. The General Division reminded that Applicant, however, that the Member had discretion to accept late documents at the hearing.

[7] The Applicant also requested leave to appeal because she was not able to attend the teleconference hearing on the date scheduled. The General Division decision summarized the contact that the Applicant had with the Tribunal, which included her oral and written requests for an adjournment of the hearing date due to her health, and because she wished more time to prepare for the hearing and file documents. The General Division denied her request and proceeded with the hearing as scheduled in her absence.

[8] The Applicant's arguments are concerned with whether the General Division failed to observe the principles of natural justice by proceeding with the hearing as set out above. The principles of natural justice require that parties to litigation are given an adequate opportunity to present their case, know and meet the case against them, and to have the decision made by an impartial arbiter based on the law and the facts. In this case, the Applicant clearly wished to file further documents with the Tribunal in advance of the General Division hearing. In error she filed the wrong documents. Although a request for further information was made regarding these documents, the Applicant did not receive this as it appears that she didn't pick up documents sent to her by Xpresspost. There is no information in the decision regarding why the Applicant did not pick up the documents.

[9] When deciding whether to grant leave to appeal, I need not determine whether the documents the Applicant sought to file with the Tribunal were relevant or would have been persuasive on the merits of her claim. I make no finding in that regard.

[10] I note that the General Division decision stated, at least twice, that questions remained unanswered because the Applicant did not participate in the teleconference hearing. This, at least in part, was a reason that the General Division concluded that there was insufficient evidence to find that the Applicant was disabled under the *Canada Pension Plan*.

[11] I am satisfied, after a review of the Applicant's letter requesting leave to appeal and the General Division decision, that the principles of natural justice may not have been fully observed in the conduct of this matter. The Applicant requested further time to file documents and prepare for the hearing. She requested an adjournment because of her poor health. She did not participate at the hearing, and claimed that this was also because of her health. This may have resulted in the Applicant not having a full opportunity to present her case to the General Division or to know and meet the case against her. Leave to appeal is granted on this basis.

Finally, the Applicant also provided an explanation for one of the unanswered questions identified in the General Division decision. The presentation of this new evidence is not a ground of appeal under the *Department of Employment and Social Development Act*.

CONCLUSION

[12] For the reasons set out above leave to appeal is granted.

[13] 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.