

**Citation: *A. J. v. Minister of Employment and Social Development*, 2015 SSTAD 1025**

**Date: August 28, 2015**

**File number: AD-15-911**

**APPEAL DIVISION**

**Between:**

**A. J.**

**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 as a result of arthritic and knee conditions when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his claim initially and after reconsideration. The Applicant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. Pursuant to the *Jobs, Growth and Long-term Prosperity Act* the appeal was transferred to the General Division of the Social Security Tribunal of Canada. The General Division held a hearing by written question and answers, and on June 23, 2015 dismissed the Applicant's appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Social Security Tribunal. He submitted that he had further medical evidence regarding his condition at the relevant time and about alternate jobs he tried, that he did not have any blood test results because this was not recorded by his doctors in Portugal, that he received a disability pension in Portugal, and that the General Division should not have assumed that other treatments for his conditions were available but not accessed because he did not have significant functional impairments.

[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 (this is set out in the Appendix to this

decision). I must therefore decide if the Applicant has presented a ground of appeal under 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 he had further medical reports that confirmed that his medical impairments began prior to the Minimum Qualifying Period (the date by which an applicant must be found to be disabled by in order to receive a *Canada Pension Plan* disability pension), and that he had not had any substantially gainful occupation since 2007. It is incumbent on an applicant to present his case fully before the General Division. The fact that there may be further evidence to support the Applicant's claim does not point to any error made by the General Division or to any breach of the principles of natural justice. These grounds of appeal do not have a reasonable chance of success on appeal.

[7] The Applicant also argued that he did not present any evidence regarding blood testing at the hearing as this information is not included in medical reports in Portugal. Again, this argument does not point to any error made by the General Division or to a breach of the principles of natural justice. It is not a ground of appeal that may have a reasonable chance of success on appeal.

[8] Further, the Applicant argued that because he receives a disability pension in Portugal, he should also receive a *Canada Pension Plan* disability pension. This argument was presented at the General Division hearing. It was considered by the General Division and rejected. The Applicant did not suggest that the General Division erred in this regard. This is therefore also not a ground of appeal under the Act that may have a reasonable chance of success on appeal.

[9] Finally, the Applicant contended that the General Division erred when it assumed that alternate treatments were available for his condition, and that because he did not participate in any of them his condition had not progressed to the point where he had significant functional impairments. This suggests that the General Division may have 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. The decision did not set out any evidentiary basis for this conclusion. This ground of appeal may have a reasonable chance of success on appeal.

## CONCLUSION

[10] The Application is granted because the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal.

[11] 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.