

Citation: *I. K. v. Minister of Employment and Social Development*, 2015 SSTAD 1017

Appeal No. AD-15-881

BETWEEN:

**I. K.**

Applicant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: August 26, 2015

## **REASONS AND DECISION**

### **\INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division dated April 23, 2015, which she alleges she received on May 6, 2015. The General Division conducted the hearing by way of videoconference on February 25, 2015. The General Division was not satisfied on a balance of probabilities that the Applicant had a severe disability at her minimum qualifying period of December 31, 2003, and therefore found that she was not eligible for a disability pension under the *Canada Pension Plan*. The Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on August 6, 2015. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

### **ISSUE**

[2] Does the appeal have a reasonable chance of success?

### **SUBMISSIONS**

[3] The Applicant submits that the decision was based on incomplete and biased information contained in her medical records. She does not however allege any bias on the part of the General Division, nor does she allege that the General Division failed to observe a principle of natural justice, erred in law or based its decision on an erroneous finding of fact made without regard for the evidence before it.

[4] The Applicant further submits that she now has more information and medical records which were not previously available. The Applicant included a number of medical records with the leave application, and also prepared additional written submissions addressing the merits of her claim to a disability pension. The Applicant does not explain why any records had not been available previously, or what efforts she might have undertaken to try to secure those records beforehand.

[5] The Applicant submits that her immune and central nervous systems have been destroyed. She submits that she has been rendered disabled, the result of having taken Clonazepam for 10 years, after a physician unnecessarily prescribed it for her, despite the fact that she had not been diagnosed with any mental or physical illness.

[6] The Applicant appears to be seeking benefits for a “closed period”, for the years in which she suffered terribly and was unable to work. The Applicant alleges that during those years, she was constantly dizzy and had no balance, had difficulty breathing, bled profusely, had no memory and became a “crazy, aggressive person”. The submissions that she ought to be entitled to benefits for a “closed period” do not appear to have been made before the General Division.

[7] The Applicant also notes that she has become impecunious and has had to rely on support from others.

[8] The Respondent has not filed any written submissions.

## **ANALYSIS**

[9] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[10] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (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.

[11] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

**(a) Closed period**

[12] While there is some dispute as to whether a disability pension for a closed period might be available in cases of temporary disability, I do not see that there were any submissions made to the General Division that the Applicant was entitled to a disability pension for a closed period. The General Division did not address this issue, one way or the other, but even had the General Division accepted that a pension is available for a closed period, it could not have concluded that the Applicant was entitled to a pension for a closed period, as it did not find her to be disabled.

[13] Essentially the Applicant is seeking a reassessment, which is beyond the scope of a leave application. I am not satisfied that the appeal has a reasonable chance of success on this ground.

**(b) Impecuniosity**

[14] The Applicant is of limited financial means and relies on the support of others. Impecuniosity is of no relevance to a leave application, as it does not address any of the enumerated grounds of appeal and does not point to any errors or failings on the part of the General Division. I am unable to consider the Applicant's limited financial means for the purposes of a leave application.

**(c) Incomplete and biased information**

[15] The documentary evidence for the period prior to the minimum qualifying period was, by the Applicant's own admission, incomplete, and the Applicant submits that as a result of this, the decision of the General Division was based on incomplete and biased information.

[16] The fact that the documentary record was incomplete or biased is insufficient to make out a valid ground of appeal, as that is not an error that can be visited upon the General Division. For the purposes of a leave application and appeal, any alleged errors or failings must have been those committed by the General Division and which fall into the enumerated grounds of appeal under subsection 58(1) of the DESDA.

[17] I am not satisfied that the appeal has a reasonable chance of success on this ground.

**(d) New Facts**

[18] The Applicant now proposes to adduce records for that timeframe. I have not reviewed the medical records attached to the Applicant's application requesting leave to appeal. In a leave application, any new facts or information should relate to the grounds of appeal. The Applicant has not indicated how the additional facts and records might fall into or address any of the enumerated grounds of appeal. If she is requesting that we consider these additional facts, re-weigh the evidence and re-assess the claim in her favour, I am unable to do so at this juncture, given the constraints of subsection 58(1) of the DESDA. Neither the leave application nor the appeal provides any opportunities to re-assess or re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*.

[19] If the Applicant has set out these additional facts and records in an effort to rescind or amend the decision of the General Division, she must now comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and must also file an application for rescission or amendment with the same Division that made the decision, which in this case is the General Division. There are strict deadlines and requirements under section 66 of the DESDA for rescinding or amending decisions. Subsection 66(2) of the DESDA requires an application to rescind or amend a decision to have been made within one year after the day on which a decision is communicated to a party, while paragraph 66(1)(b) of the DESDA requires an applicant to demonstrate that the new facts are material and could not have been discovered at the time of the hearing with the exercise of reasonable diligence. Under subsection 66(4) of the DESDA, the Appeal Division in this case has no

jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so.

[20] The new facts as presented by the Applicant do not raise nor relate to any grounds of appeal and I am therefore unable to consider them for the purposes of a leave application.

### **CONCLUSION**

[21] The application for leave to appeal is refused.

*Janet Lew*

Member, Appeal Division