

Citation: *M. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1028

Date: August 28, 2015

File number: AD-15-917

APPEAL DIVISION

Between:

M. M.

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 as a result of a heart attack when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her claim initially and after reconsideration. The Applicant appealed to the Office of the Commissioner of Review Tribunals. On April 1, 2013 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 videoconference hearing and on May 13, 2015 dismissed her appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. She summarized her medical conditions and argued that all of the medical reports should be considered as evidence of the continuity of her disability. She also repeated her personal characteristics including age, education, work and life experience and her lack of ability to speak or read English.

[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). Hence, I must 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 summarized her medical condition and the limitations that it has placed on her. This evidence was also presented to the General Division and considered by it in reaching its decision. The Applicant did not allege that the General Division made any error in its consideration of this evidence. Therefore this argument does not disclose a ground of appeal.

[7] The Applicant also repeated her personal characteristics, including age, education in India, work history, language skills, etc. This was also set out in the General Division decision and considered. There is no indication that the General Division decision contained any error in this regard. The repetition of this evidence is not a ground of appeal under the Act.

[8] Finally, the Applicant contended that the General Division should have considered all of the medical evidence of the continuity of her disability. From this I have gleaned that the Applicant wished to argue that the General Division made its decision based on a consideration of only some of the medical evidence that was before it. The Federal Court of Appeal has decided that the decision maker is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence need not be mentioned in the written decision. The General Division decision contained a detailed summary of the medical evidence that was before it. The Applicant did not set out any particulars of any evidence that was not considered and should have been.

[9] In addition, it is for the trier of fact (the General Division in this case) is to receive the evidence from the parties and weigh it to make a decision based on the facts and the law. It is not for the Tribunal deciding whether to grant leave to appeal to substitute its decision for that of the trier of fact (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is refused because the Applicant did not present a ground of appeal that has a reasonable chance of success on appeal.

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.