

Citation: *M. S. v. Minister of Employment and Social Development*, 2015 SSTAD 1060

Date: September 9, 2015

File number: AD-15-953

APPEAL DIVISION

Between:

M. 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 he was disabled by ongoing pain in various parts of his body and depression when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his application initially and after reconsideration. The Applicant appealed the reconsideration decision to the General Division of the Social Security Tribunal. The General Division allowed the appeal and concluded that the Applicant was disabled as at May 2012 based on the written record before it.

[2] The Applicant requested leave to appeal from the General Division decision. He argued that the General Division based its decision on erroneous findings of fact, and that he should have been found disabled as of May 2011, and that a further two months of “back pay” should be paid to him.

[3] The Respondent filed no submissions regarding the request for leave to appeal.

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 section is set out in the Appendix to this decision). Hence, I must decide if the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal.

[6] The Applicant argued that the General Division based its decision on erroneous findings of fact, and that he was disabled as of May 2011, not May 2012 as concluded by the General Division. He further set out that this was supported by the medical evidence, but the reports that referred to May 2012 erred in doing so. He also stated that he may provide further evidence to support this contention.

[7] The General Division is obliged to receive all of the evidence, weigh it and reach a decision based on the law and the evidence presented. The Applicant did not allege that the General Division did not do this. The General Division decision set out clearly that it considered all of the information before it, including the documents prepared by the Applicant and the medical records. It concluded that the Applicant was disabled in 2012 based on the evidence before it. If there were errors in the medical evidence submitted by the Applicant, it was for him to correct this prior to the decision being made. I am not satisfied that the General Division based its decision on any erroneous findings of fact made in a perverse or capricious manner, or without regard to the material before it. This ground of appeal does not have a reasonable chance of success on appeal.

[8] The Applicant also stated that he might provide additional documents to support his claim. The promise to perhaps provide further evidence is not a ground of appeal listed in the *Department of Employment and Social Development Act* (DESD Act). Leave to appeal cannot be granted on this basis.

[9] Finally, the Applicant contended that a further two months of “back pay” was owed to him. He did not explain how this was to have accrued. Subsection 64 (2) of the DESD Act states that the Tribunal may only decide questions of fact or law as to whether a benefit is payable to a person, whether a person is eligible for a division of unadjusted pensionable earnings, whether a person is eligible for an assignment of a contributor’s retirement pension, and whether a penalty should be imposed under Part II of the DESD Act. This authority does not include deciding the amount of “back pay” for a disability pension that should be paid. The Tribunal can not grant any such relief to the Applicant. This ground of appeal therefore has no reasonable chance of success.

CONCLUSION

[10] The Application is refused for the reasons set out above.

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.