

Citation: *D. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1054

Date: September 4, 2015

File number: AD-15-926

APPEAL DIVISION

Between:

D. 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 by depression when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her claim initially and after reconsideration. The Applicant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal of Canada on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a videoconference hearing and on May 25, 2015 dismissed the appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. She argued that the General Division made errors of fact and that it may not have observed the principles of natural justice with respect to how the hearing was conducted.

[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 (see the Appendix to this decision). Accordingly 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 Appellant argued that the General Division based its decision on an erroneous finding of fact that it made without regard to the material before it. She contended that the

evidence clearly supported the conclusion that she was disabled by depression and summarized the tragic circumstances that led to this, and its continuation. Disagreement with the decision reached and a repetition of the evidence in this case did not establish that the General Division made any error in fact. These grounds of appeal do not have a reasonable chance of success on appeal.

[7] The Applicant also argued that the General Division misconstrued the evidence when it concluded that Dr. Seli became an advocate for her. She contended that Dr. Seli was objective in her reporting. On reading the decision it is not clear what weight the General Division placed on the evidence from Dr. Seli. The decision decided that Dr. Seli had taken on the role of an advocate for the Applicant, but also seemed to rely on her reporting of symptoms, diagnosis and treatment in reaching the decision. This ground of appeal therefore points to erroneous findings of fact perhaps made perversely, and may have a reasonable chance of success on appeal.

[8] The Applicant also contended that the General Division erred when it set out that the Applicant had reported to Ms. Tiismann that finances were no longer a problem in May 2013. She denied that this was the case. Nothing suggests, however, that this error was made in a perverse or capricious manner or without regard to the evidence that was before the General Division. This ground of appeal does not have a reasonable chance of success on appeal.

[9] Finally, the Applicant suggested that the principles of natural justice may not have been observed at the hearing of this matter. These principles are concerned with ensuring that a claimant has the opportunity to fully present her case, meet the case against her and have the decision made by an impartial arbiter based on the law and the facts.

[10] The principles of natural justice are concerned with ensuring that parties to litigation have the opportunity to present their case, know the case against them, and have the decision made by an impartial arbiter based on the facts and the law. The Applicant wrote in the application requesting leave to appeal that she was asked about certain dates but not permitted to check her notes, so she felt totally overwhelmed. She also sensed that the General Division Member was bored or not interested, and did not grasp that depression can change a person in ways they themselves do not recognize. If true, these statements would indicate that the

principles of natural justice may not have been observed. This ground of appeal may have a reasonable chance of success on appeal.

[11] If the Applicant wishes to rely on this ground of appeal at the hearing of the appeal, she should provide a transcription of the hearing, or the relevant time count on the recording in advance of the hearing so that this can be properly considered.

CONCLUSION

[12] The Application is granted as the Applicant has presented grounds of appeal that may have a reasonable chance of success on appeal.

[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.