

**Citation:** *N. I. v. Minister of Employment and Social Development*, 2015 SSTAD 1066

**Date:** September 10, 2015

**File number:** AD-15-954

**APPEAL DIVISION**

**Between:**

**N. I.**

**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 work injury to her back, left hand and wrist 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 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and dismissed the appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. She argued that the General Division failed to observe a principle of natural justice, erred in law and failed to consider her testimony. She also contended that the General Division did not assess her condition in the “real world” context, and repeated some of the evidence that was presented to the General Division.

[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 may be considered to grant leave to appeal a decision of the General Division (see 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] First, the Applicant argued that the General Division failed to observe a principle of natural justice. These principles are concerned with ensuring that parties have the opportunity to present their case, know and meet the case against them, and have a decision made by an impartial arbiter based on the facts and the law. The Applicant gave no indication how any of these principles were not observed in her case. Without this, I am not persuaded that there was a breach of any of the principles of natural justice. This ground of appeal does not have a reasonable chance of success on appeal.

[7] The Applicant also repeated some of the evidence that was presented at the General Division hearing, including her education and work experience. The General Division decision summarized this evidence. Its repetition is not a ground of appeal under the *Department of Employment and Social Development Act*.

[8] The Applicant further argued that the General Division did not consider all of her testimony. The Federal Court of Appeal has decided that the tribunal 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 (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). The Applicant did not point to any evidence that was not considered. This ground of appeal does not have a reasonable chance of success on appeal.

[9] Finally, the Applicant argued that leave to appeal should be granted because the General Division did not assess her disability in a “real world” context. The decision recited the Applicant’s personal characteristics including her age, education, work experience and difficulty with English. However, it is not clear whether it analysed this in reaching its decision. In *Garrett v. Canada (Minister of Human Resources Development)*, 2005 FCA 84 the Federal Court of Appeal stated that the failure to cite or conduct an analysis in accordance with *Villani v. Canada (Attorney General)*, 2001 FCA 248 (which established that disability must be assessed in a “real world context”) is an error in law. This ground of appeal therefore points to an error of law in the decision. This ground of appeal may have a reasonable chance of success on appeal.

## **CONCLUSION**

[10] As the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal, leave to appeal is granted.

[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.