

Citation: *H. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1062

Date: September 10, 2015

File number: AD-15-956

APPEAL DIVISION

Between:

H. 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 he was disabled by low back pain and associated limitations 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 Office of the Commissioner of Review Tribunals. 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 hearing and on May 28, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. He contended that the General Division based its decision on erroneous findings of fact, that it should not have relied on the functional capacity evaluation report that was presented, and that further information from his employer would follow.

[3] The Respondent filed no submissions regarding this 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 (the section is set out in the Appendix to this decision). Therefore 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 contended that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it. He provided no express details, except his arguments related to the treatment of the functional capacity evaluation report by the General Division.

[7] In this regard, the Applicant contended that he had argued at the General Division hearing that this evaluation report was worded to favour employers, and that he had provided a letter to the General Division Member to support this argument. He also argued that the functional capacity evaluation was “unfair” because a job match was not performed, and that it should only reflect capacity at the time of the evaluation and not into the future. It is for the General Division, as the trier of fact, to receive the evidence from the parties, weigh it and reach a decision based on the facts and the law. The Appeal Division, in deciding whether to grant leave to appeal, is not to reweigh the evidence (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82). This is essentially what the Applicant has asked to be done with this ground of appeal.

[8] Upon review of the General Division decision, it is clear that all of the evidence was considered and weighed to reach the decision. This included the functional capacity evaluation report as well as medical evidence and the Applicant’s written and oral evidence. Leave to appeal cannot be granted on the basis of the Applicant’s disagreement with how the General Division weighed the evidence to reach its decision.

[9] The Applicant also submitted that his employer would provide additional information to the Tribunal. The presentation of new evidence is not a ground of appeal under the *Department of Employment and Social Development Act*. Therefore, this is also not a ground of appeal that may 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 may have 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.