

Citation: *C. D. v. Minister of Employment and Social Development*, 2015 SSTAD 1070

Date: September 11, 2015

File number: AD-15-969

APPEAL DIVISION

Between:

C. D.

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 a number of mental illnesses when she applied for a *Canada Pension Plan* disability Pension. The Respondent denied her claim initially and after reconsideration. The reconsideration decision was dated March 25, 2014. On July 31, 2014 the Applicant sought to appeal this decision to the General Division of this Tribunal. This appeared to have been after the time to do so had expired; the Applicant requested an extension of time to file the appeal. On May 28, 2015 the General Division denied the Applicant's request for an extension of time to file the appeal.

[2] The Applicant requested leave to appeal this decision to the Appeal Division of the Tribunal. She claimed that the General Division did not observe the principles of natural justice, and that it based its decision on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before it.

[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 (the section 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] First, the Applicant argued that the General Division based its decision on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before it. She did not, however, set out what these erroneous findings of fact were or how they were made in a perverse or capricious manner, or without regard to the evidence. Without this, I am not persuaded that the General Division decision contained an error in this regard. This ground of appeal does not have a reasonable chance of success on appeal.

[7] The Applicant also argued that the General Division did not observe the principles of natural justice. These principles are concerned with ensuring that parties to a legal proceeding have the opportunity to fully present their case, know and meet the case against them, and to have the decision made by an impartial decision maker based on the facts and the law.

[8] In this case, the General Division decision considered the request for an extension of time to file the appeal. It correctly set out the law that was to be applied as stated in the *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883 decision. The General Division mechanically applied the factors to be considered and concluded that the Applicant had an arguable case, a continuing intention to appeal and that the Respondent would not be prejudiced if the matter proceeded.

[9] The remaining factor considered was whether the Applicant had a reasonable explanation for her delay. The Applicant acknowledged that she filed her appeal to the General Division ten days after the time to do so had expired. Her representative explained, however, that she had not received the Respondent's reconsideration decision in a timely fashion and that she was assured by the medical adjudicator that the time to file the appeal would be extended. The General Division considered this and concluded that this was not a reasonable explanation for the delay as it was inconsistent with the documents before it.

[10] In its decision, the General Division also set out the principle set out in *Canada (Attorney General) v. Larkman*, (2012 FCA 204), that the overriding consideration is that the interests of justice be served. It did not consider nor apply this principle in making its decision. This may have been an error. This error may have resulted in the Applicant not having a full opportunity to present her case, which would be a breach of the principles of natural justice. This ground of appeal therefore may have a reasonable chance of success on appeal.

CONCLUSION

[11] The Application is granted for these reasons.

[12] 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.