Citation: ***S. L. v. Minister of Employment and Social Development,*** **2015 SSTAD 1106**

Date: September 18, 2015

File number: AD-15-454

APPEAL DIVISION

Between:

S. L.

Applicant

and

Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on September 18, 2015

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

INTRODUCTION

[2] In a decision issued May 11, 2014, the General Division of the Social Security Tribunal of Canada (the Tribunal), found that the Applicant did not meet the criteria for payment of a *Canada Pension Plan* (CPP) disability pension. The Applicant seeks leave to appeal the decision, (the Application).

GROUNDS OF THE APPLICATION

[3] The Applicant's minimum qualifying period (MQP), ended on December 31, 2012. She maintains that she became disabled prior to this date and remains so to date. As reason for the Application, Counsel for the Applicant submitted that the General Division failed to give adequate consideration to the medical documentation with respect to the nature and extent of the Applicant's multiple injuries and disabilities. Counsel for the Applicant also concluded that the General Division failed to weigh the impact of the Applicant's injuries.

[4] The Tribunal inferred that the Applicant grounds the Application on subsection 58(1)(b) and on subsection 58(1)(c) of the *Department of Employment and Social Development* (DESD) *Act*. These subsections afford an applicant an appeal on the basis that the General Division erred in law or based its decision on an erroneous finding of fact which it made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[5] The issue that the Tribunal must decide is whether the appeal has a reasonable chance of success.

THE LAW

[6] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.[1] To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success[2]. In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41as well as in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case.

[7] There are only three grounds on which an appellant may bring an appeal. These grounds are set out in section 58 of the DESD Act. They are,

> (1) a breach of natural justice;
>
> (2) that the General Division erred in law; and
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> (3) the General Division based its decision on an error of fact made in a perverse or capricious manner or without regard for the material before it.[3]

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[1] Sections 56 to 59 of the DESD Act. Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal."

[2] The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

[3] **58(1) Grounds of Appeal** –

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.

ANALYSIS

[8] In order to grant leave to appeal the Tribunal must be satisfied that the appeal would have a reasonable chance of success. This means that the Tribunal must first find that, were the matter to proceed to a hearing,

> (a) at least one of the grounds of the Application relate to a ground of appeal; and
>
> (b) there is a reasonable chance that the appeal would succeed on this ground.

For the reasons set out below the Tribunal is not satisfied that this appeal would have a reasonable chance of success.

[9] The Applicant claimed to be suffering from neck and back pain; right shoulder and arm pain; degenerative disc disease; vertigo and loss of balance. While her family physician did not complete the medical report required by the CPP application process, the Applicant attached a narrative report in which he stated that he had known the Applicant for 20 years and that he had treated her for her main medical conditions.[4] (GT1-48) In the Applicant's questionnaire for disability benefits she stated that she stopped working because of dizziness and pain. The Applicant also stated that she visited her family physician because of "pain and stiffness, [in] back neck shoulder[s] and headache[s]". (GT1- 82)

[10] Counsel for the Applicant submitted that the General Division failed to give adequate consideration to the medical documentation that the Applicant submitted. The Tribunal finds that the decision establishes the contrary and that the submission does not give rise to a ground of appeal. On examining the General Division decision and the material in the Tribunal record, the

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[4] 2011-11-30 Narrative report of Dr. B. Pignanelli, known to client 20 years. Started treating main medical condition in 2009-09. Problem list as follows:

- Presyncope NYD
- Atherosclerosis (arterial Doppler to leg + carotid)
- BVP
- WAD II neck (motor vehicle accident 2009-08) lower back soft tissue injury
- Chronic pain syndrome
- Myofascial pain right forearm. Right shoulder girdle
- Rotator cuff tendonopathy
- Cervical spine spondylosis
- Lumbar spondylosis-facet osteoarthritis, central disc protrusion
- Ulnar neuropathy at the elbow
- Menorrhagia — Fe (iron) Deficiency secondary to uterine fibroid.

Tribunal finds that this is not a case where the General Division stated a conclusion after simply quoting the medical reports and citing a brief opinion. *Garcia v. Canada (Attorney General)*, 2001 FCA 200.

[11] The General Division Member dealt with the medical evidence in two sections of the decision. The Member summarised the medical evidence in paragraphs 28-49 of the decision. In the Analysis section, the Member engaged in a lengthy discussion of the Applicant's medical conditions; the various medical examinations she underwent; and the treatments that were prescribed for her, all with a view towards determining whether the medical evidence supported a finding of severe and prolonged disability. The documents that the General Division examined included the report of Dr. Desai's nerve conduction study that ruled out carpal tunnel syndrome of the Applicant's right arm as well as the investigations of Drs. Ling and Kapoor into the Applicant's loss of balance and vertigo.

[12] Counsel for the Applicant submitted that the General Division did not give adequate consideration to the medical documentation and failed to weigh the impact of the Applicant's injuries. While the General Division may not have referred to every piece of medical evidence[5] in its analysis, in the Tribunal's view the General Division assessed the medical evidence with sufficient particularity to allow a reviewing body to determine how it reached its conclusion that the medical evidence did not support a finding of "severe and prolonged" disability.

[13] Furthermore, at paragraphs 55-59 of the decision the General Division specifically considered the impact of the Applicant's multiple medical conditions as well as her medication regimes on her ability to obtain and maintain substantially gainful employment. That the General Division found that the Applicant's medical conditions did not rise to the level of severe disability as defined by CPP subsection 42(2)(a) is, in the circumstances of the case, a conclusion that falls within a range of possible, acceptable outcomes which are defensible in respect of the facts and the law. Accordingly, the Tribunal finds that leave to appeal cannot be granted on the basis of the Applicant's latter submission.

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[5] *Simpson v. Canada (Attorney General)*, 2012 FCA 82 at para, 10. A Tribunal is not required to refer to every piece of evidence that was before it.

CONCLUSION

[14] Counsel for the Applicant submitted that the General Division failed to give adequate consideration to the medical documentation with respect to the nature and extent of the Applicant's multiple injuries and disabilities; and failed to weigh the impact of the Applicant's injuries. The Tribunal is not satisfied that either submission gives rise to a ground of appeal that would have a reasonable chance of success. Accordingly, the Application is refused.

Hazelyn Ross
Member, Appeal Division