

**Citation:** *Minister of Employment and Social Development v. G. V.*, 2015 SSTAD 1114

**Date:** September 18, 2015

**File number:** AD-15-966

**APPEAL DIVISION**

**Between:**

**Minister of Employment and Social Development  
(formerly known as the Minister of Human Resources and Skills Development)**

**Applicant**

**and**

**G. V.**

**Respondent**

**Decision by:** Valerie Hazlett Parker, Member, Appeal Division

## REASONS AND DECISION

### INTRODUCTION

[1] The Respondent claimed that he was disabled by injuries from a fall when he applied for a *Canada Pension Plan* disability pension. The Applicant denied his application initially and after reconsideration. The Respondent appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. On April 1, 2013 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 decided that the Respondent was disabled, with a deemed disabled date of July 2010.

[2] The Applicant requested leave to appeal from this decision. It did not contest the decision that the Respondent is disabled. It submitted that the General Division erred in law as it stated that the commencement date for payment of the disability pension was October 2010.

### ANALYSIS

[3] 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.

[4] 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 (see the Appendix to this decision). Accordingly I must decide if the Applicant has presented a ground of appeal within section 58 of the Act that may have a reasonable chance of success on appeal.

[5] Section 69 of the *Canada Pension Plan* states that where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled. The Applicant argued that the

General Division erred in law as it decided that payment of the disability pension in this case would commence three months after the date that the Respondent was deemed to be disabled. This argument points to an error of law in the General Division decision. This ground of appeal has a reasonable chance of success on appeal.

[6] For these reasons, the application for leave to appeal is granted.

*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.