**Citation:** ***M. M. v. Minister of Employment and Social Development,*** **2015 SSTAD 1135**

**Date: September 28, 2015**

**File number: AD-15-974**

**APPEAL DIVISION**

**Between:**

**M. 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 she was disabled as a result of an injury to her arm at work and numerous other physical and mental health conditions 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 of Canada pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and on June 14, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal this decision to the Appeal Division of the Tribunal. She disagreed with the General Division conclusion that she was not cooperative with the Workplace Safety and Insurance Board programs, that she did not participate it its retraining program voluntarily and had difficulties with its rehabilitation program. She set out her physical and mental limitations, and disagreed with the weight that the General Division placed on some of the evidence that was before it.

[3] The Respondent filed no submissions regarding this application.

## 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 (this is set out in the Appendix to this

decision). Hence, I must decide if the Applicant has presented a ground of appeal that falls within section 58 of the Act and has a reasonable chance of success on appeal.

[6] The Applicant presented a number of grounds of appeal. First, she disagreed with the General Division conclusion, based on the evidence before it, that she was not cooperative with what the Workplace Safety and Insurance Board (WSIB) required of her. She further explained that this matter was under appeal. This finding of fact was made by the General Division after receiving and weighing the evidence presented to it. The Applicant did not suggest that this finding of fact was made in a perverse or capricious manner or without regard to the material before it. It is therefore not a ground of appeal that falls within the ambit of section 58 of the Act. Leave to appeal cannot be granted on this basis.

[7] The Applicant next contended that she did not voluntarily participate in the WSIB retraining program, and did not do well in it. The General Division decision was not based on whether she voluntarily participated in this program or not. The General Division accepted the evidence that she did participate and weighed this evidence with the other evidence to reach its decision. It is not for the Tribunal deciding whether to grant leave to appeal to reweigh the evidence to reach a different conclusion (*Misek v. Canada (Attorney General)*, 2012 FC 890). This ground of appeal does not have a reasonable chance of success on appeal.

[8] The Applicant also set out her physical and mental ailments. This evidence was before the General Division and considered by it in reaching its decision. The repetition of this evidence is not a ground of appeal under the *Department of Employment and Social Development Act*.

[9] The Applicant, further, contended that she was let go from her WSIB placement because she did not have the required certificate to work at that job, and not because of her lack of cooperation. The General Division decision did not state that she was asked to leave the placement because of her lack of cooperation. It stated that she was asked to leave. The decision also stated that the Applicant did not cooperate with respect to a meeting to arrange a work placement. This ground of appeal does not point to any error made by the General Division or to any breach of the principles of natural justice. As such, it is not a ground of appeal upon which leave to appeal can be granted.

[10] Finally, the Applicant contended that the General Division ought not to have placed such reliance on issues in the WSIB matter which remain unresolved. With this argument, she again asked this Tribunal to reevaluate and reweigh the evidence that was put before the General Division. The Tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the General Division who made the findings of fact – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, this argument does not raise a ground of appeal that may have a reasonable chance of success.

**CONCLUSION**

[11] 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.