

Citation: *M. B. v. Minister of Employment and Social Development*, 2015 SSTAD 1136

Date: September 28, 2015

File number: AD-15-999

APPEAL DIVISION

Between:

M. B.

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 ongoing pain when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her application initially and after reconsideration. The Appellant 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 in April 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and on May 14, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. She argued that the General Division proceeded without jurisdiction and did not observe the principles of natural justice as it held the hearing without recording it, that it made errors of law and factual errors.

[3] The Respondent filed no submissions.

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 (see 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 may have a reasonable chance of success on appeal.

[6] The Applicant, first, argued that the General Division acted beyond its jurisdiction and breached the principles of natural justice when it proceeded with the hearing in the absence of an audio recording. I note, however, that the General Division decision stated clearly that the Applicant and her counsel were made aware that the recording device had malfunctioned and consented to proceed with the hearing in the absence of any recording.

[7] In addition, neither the legislation nor regulations that govern the operation of the Tribunal require that hearings be recorded. The Federal Court of Appeal has repeatedly concluded that without such a requirement, there is no breach of natural justice if a hearing is held and no recording made of it. Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[8] The Applicant also argued that the General Division erred in fact when it decided that her disability was not severe under the *Canada Pension Plan*. It is for the General Division, as the trier of fact, to receive the evidence of the parties, weigh it and reach a decision based on the law and the facts. The Applicant did not suggest that the General Division did this improperly. The Applicant's disagreement with the decision reached is not a ground of appeal that falls within the ambit of section 58 of the Act.

[9] Finally, the Applicant contended that the General Division did not consider the Applicant's age, work experience and other personal characteristics when reaching its decision that her disability was not severe. The decision set out these factors, and considered them in some detail. It made no error in this regard. This ground of appeal does not have a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is refused for the reasons set out above. The Applicant has not presented 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.