

**Citation: *S. C. v. Minister of Employment and Social Development*, 2015 SSTAD 1137**

**Date: September 28, 2015**

**File number: AD-15-993**

**APPEAL DIVISION**

**Between:**

**S. C.**

**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 he was disabled as a result of a heart attack and rectal cancer when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his claim initially and after reconsideration. The Applicant appealed to the General Division of the Social Security Tribunal. On July 27, 2015 the General Division dismissed his appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. He wrote in the application requesting leave to appeal that he continued to have limitations from his medical conditions, did not qualify for medical or life insurance, and worked on his own time and to keep active.

[3] The Respondent filed no submissions.

### ANALYSIS

[4] 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 (the section is set out in the Appendix to this decision). Therefore, I must decide if the Applicant has presented a ground of appeal that falls within the ambit of section 58 of the Act and that may have a reasonable chance of success on appeal.

[6] The Applicant wrote in the application requesting leave to appeal that his rectum size is permanently reduced and he also has permanent heart damage, which conditions have daily consequences for him regarding his ability to do things. This evidence was before the General

Division when it made its decision. This was considered with the other evidence presented. The repetition of this evidence is not a ground of appeal under section 58 of the Act. Leave to appeal cannot be granted on the basis of this.

[7] The Applicant also stated that he works on his own time to stay active and without “physio activities as recommended by medical professional”. Again, this information was presented to the General Division when it made its decision. It is also not a ground of appeal within section 58 of the Act.

[8] Finally, the Applicant contended that he does not qualify for jobs, medical or life insurance. The fact that he does not qualify for life or medical insurance does not automatically mean that he is disabled under the *Canada Pension Plan*. The General Division considered that Applicant’s ability to work when it reached the decision in this matter. These arguments do not point to any error of law or of fact made by the General Division, nor do they suggest that it failed to observe the principles of natural justice. They are not grounds of appeal within section 58 of the Act.

## **CONCLUSION**

[9] The Application is refused as the Applicant has not presented a ground of appeal that falls within section 58 of the Act.

*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.