Citation: *R. P. v. Minister of Employment and Social Development*, 2015 SSTAD 1148

Appeal No. AD-15-353

BETWEEN:

R. P.

Applicant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: September 29, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated March 12, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan,* as it found that his disability was not "severe" at his minimum qualifying period of December 31, 2011. The Applicant's representative at the time, his son, filed an application requesting leave to appeal on June 9, 2015. To succeed on this application, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[2] Does the appeal have a reasonable chance of success?

SUBMISSIONS

[3] On June 9, 2015, the Representative sent an e-mail to the Social Security Tribunal advising that the Applicant was waiting for new evidence from his physician to support his claim and that once that documentation was received, would be filing a "proper appeal". The Representative attached the application requesting leave to appeal, as well as a letter dated June 9, 2015, advising that the Applicant would be meeting with his physician on June 22, 2015 for a medical appointment.

[4] In the application, the Applicant advised that his physician had "repeatedly told [him] not to work for years". The Applicant also advised that he was running down his body and taking too many drugs. He advised that he is unable to work, does not want to take as many pills to function and is unable to even push a broom without throwing his back out. He confirmed that more evidence would follow.

[5] On August 7, 2015, the Social Security Tribunal wrote to the Applicant as follows:

> On June 9, 2015, you sent an e-mail to the Social Security with the Application Requesting Leave to Appeal to the Social Security Tribunal, on behalf of the Applicant, advising that the Applicant was waiting for new evidence from his physician to support his claim and that once the documentation was received, would be filing a "proper appeal". The Applicant was scheduled to see his physician on June 22, 2015.
>
> Any new records or reports should fall into or relate to one of the grounds of appeal set out under subsection 58(1) of the *Department of Employment and Social Act*, namely 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.
>
> If you intend to file and rely upon any additional reports, they should relate to the grounds of appeal under subsection 58(1) of the *Department of Employment and Social Act,* otherwise they will not be considered for the purposes of a leave to appeal application with the Appeal Division.
>
> In other words, how will the report of the physician support any claim that the General Division either failed to observe a principle of natural justice, or that it made an error of law or an erroneous finding of fact?
>
> The Tribunal must receive **any additional information, in writing,** by September 4, 2015.

[6] The Applicant filed a letter with the Social Security Tribunal on August 24, 2015, advising that his son had stopped acting for him. The Applicant also advised that he had yet to see his doctor and obtain updated medical information. He requested more time to obtain more information. The Applicant provided a summary of his life history.

He noted that his health and mental state are currently very poor. He did not address any of the questions raised by the Social Security Tribunal in its letter of August 7, 2015, and in particular, did not explain how any of the proposed forthcoming medical records would address any of the grounds of appeal under subsection 58(1) of the DESDA.

ANALYSIS

[7] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development),* [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada (Attorney General),* 2010 FCA 63.

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

> (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.

[9] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

[10] The Applicant has not raised any grounds which fall into the enumerated grounds of appeal under subsection 58(1) of the DESDA. While he alleges that there is more forthcoming medical evidence to support his claim for a disability pension, he does not allege that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, nor does he allege that the General Division erred in law or 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. The law requires that there be at least one reviewable error made by the General Division to give the appeal a reasonable chance of success. On this basis, I am not satisfied that there is an arguable case or that the appeal has a reasonable chance of success.

NEW RECORDS

[11] The Applicant submits that there will be forthcoming medical information, following a medical appointment with his family physician. Originally, this appointment had been scheduled for June 22, 2015, but apparently did not take place. The Applicant submits that this medical opinion will further support his claim for a disability pension.

[12] Even if I were to grant the additional time or extension sought by the Applicant, any additional reports should relate to the grounds of appeal. It seems that the proposed medical report or information is intended to support his claim to a disability pension. The Applicant has not indicated how any proposed additional facts or records might fall into or address any of the enumerated grounds of appeal. If he is requesting that I consider any additional facts and records, re-weigh the evidence and re-assess the claim in the Applicant's favour, I am unable to do so at this juncture, given the constraints of subsection 58(1) of the DESDA. Neither the leave application nor the appeal provides any opportunities to re-assess or re-hear the merits of the claim to determine whether the Applicant is disabled for the purposes of the *Canada Pension Plan.* In the event that the Applicant intends to file any "new" opinions or records, he should note they ought to fall into or relate to one of the enumerated grounds of appeal set out under subsection 58(1) of the DESDA. This information was already provided to the Applicant in the letter dated August 7, 2015 from the Social Security Tribunal, quoted in paragraph 5 above.

[13] If there are any new facts or records which the Applicant intends to file in an effort to rescind or amend the decision of the General Division, he must now comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and must also file an application for rescission or amendment with the same Division that made the decision. There are strict deadlines and requirements under section 66 of the DESDA for rescinding or amending decisions.

[14] Subsection 66(2) of the DESDA requires an application to rescind or amend a decision to have been made within one year after the day on which a decision is communicated to a party, while paragraph 66(1)(b) of the DESDA requires an applicant to demonstrate that the new facts are material and could not have been discovered at the time of the hearing with the exercise of reasonable diligence. Under subsection 66(4) of the DESDA, the Appeal Division has no jurisdiction under the circumstances to rescind or amend a decision based on new facts, as it is only the General Division which in this case made the decision which is empowered to do so.

CONCLUSION

[15] As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider under subsection 58(1) of the DESDA, I am unable to find that the appeal has a reasonable chance of success and I therefore refuse the Application for leave.

Janet Lew
Member, Appeal Division