

**Citation: *V. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1175**

**Date: October 1, 2015**

**File number: AD-15-1047**

**APPEAL DIVISION**

**Between:**

**V. 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 Transient Ischemic Accidents when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her application 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 on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a videoconference hearing and on August 10, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. She argued that she was disabled under the *Canada Pension Plan*, that she cooperated with vocational attempts but was unable to continue due to her medical impairments, and that the General Division decision was not reasonable because she was unable to be gainfully employed within the minimum qualifying period (the date a claimant must be found to be disabled by to receive the disability pension).

[3] The Respondent filed no submissions with respect to this application.

### 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). I must therefore decide if the Applicant has put forward a ground of

appeal that falls within section 58 of the Act and may have a reasonable chance of success on appeal.

[6] First, the Applicant argued that she had a severe and prolonged condition that prevented her from working. From this, it appears that she wished the Appeal Division to grant her leave to appeal because she disagreed with the General Division decision. Disagreement with the decision is not a ground of appeal under the Act. It does not point to any error of fact, error of law, or to a breach of natural justice by the General Division. Leave to appeal is not granted on this basis.

[7] The Applicant also argued that she cooperated with vocational attempts and was compliant with treatment. I accept that she was cooperative with vocational matters. The General Division heard and weighed the evidence regarding her compliance with medical recommendations. With this argument, however, the Applicant did not allege that the General Division made any error. It is not a ground of appeal under the Act.

[8] Finally, the Applicant contended that the General Division decision was not reasonable because she was not able to be employed within the minimum qualifying period. This argument does not point to any error of law or fact, or to a breach of the principles of natural justice. The argument does not present any basis upon which the General Division decision could be seen to be unreasonable. This is also not a ground of appeal that may have a reasonable chance of success on appeal.

## **CONCLUSION**

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