

**Citation: *K. S. v. Minister of Employment and Social Development*, 2015 SSTAD 1151**

**Date: September 29, 2015**

**File number: AD-15-1015**

**APPEAL DIVISION**

**Between:**

**K. S.**

**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 Post-Traumatic Stress Disorder and its associated symptoms 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 pursuant to the *Jobs, Growth and Long-term Prosperity Act* in April 2013. The General Division initially scheduled an oral hearing for this appeal. After the Applicant's request for the matter to be decided without having to appear, the appeal was heard by written questions and answers. The General Division denied the Applicant's appeal on August 11, 2015.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. She made lengthy representations regarding her symptoms of Post-Traumatic Stress Disorder (PTSD), her fear and other matters.

[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 (the section is set out in the Appendix to this decision). Accordingly, 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 lengthy arguments to support her request for leave to appeal. Many of her statements were presented to the General Division and considered by it in reaching its decision. These statements included:

- a) Her condition has been worsening for a long period of time;
- b) Her ability to work was greatly reduced by the abuse she suffered during her marriage;
- c) She continues to live in fear of her former husband, people in his life, and as a result of two privacy breaches including the loss of her family court file and the loss of some of her medical information;
- d) She has not been able to work full time, and sometimes not at all since suffering the abuse in her marriage;
- e) If she leaves her home, she does tasks in a random fashion, and tries to be accompanied by someone;
- f) She suffered from and worked with symptoms of PTSD prior to its formal diagnosis in 2010;
- g) She has been told that prescription medication can do a lot of damage to a person, so has chosen to use naturopathic remedies instead; and
- h) She has been approved for a disability tax credit and is in receipt of Ontario Disability Support Plan benefits.

[7] The repetition of this evidence is not a ground of appeal under the Act. Leave to appeal cannot be granted on this basis.

[8] The Applicant also wrote that she has conflicting information on the decision. She did not explain what this statement meant. Without some further explanation, I am not persuaded that this discloses a ground of appeal under section 58 of the Act.

[9] The Applicant submitted that she has been told that she cannot attend PTSD group treatment because she continues to be under threat. This was not mentioned in the General Division decision. The presentation of new evidence is not, however, a ground of appeal under the Act.

[10] For the same reason, the Applicant's promise to present additional evidence that established that her supervisor was concerned about her availability for work because of her health is not a ground of appeal under the Act.

[11] The Applicant also suggested that the income she earned after the minimum qualifying period only appeared to be substantial because it included support and social assistance income. No ground of appeal is disclosed by providing a further explanation for the evidence that was before the General Division.

[12] Similarly, the Applicant contended that Dr. Parna, her family doctor, was not "up to speed" on her condition and all of her fears, and that this doctor's prognosis that the Applicant would be able to return to normal function in the future was unrealistic. Providing additional arguments regarding the evidence that was presented at the hearing is not a ground of appeal under the Act. The Appeal Division, when deciding whether to grant leave to appeal, is not to reweigh the evidence that was before the General Division to reach a different conclusion. Hence, this does not disclose a ground of appeal that may have a reasonable chance of success on appeal.

[13] Finally, the Applicant inquired whether there was an Ombudsman at the Tribunal or within the Federal Government with whom she could discuss her matter. This statement does not point to any error of fact, of law, or to a breach of the principles of natural justice by the General Division. It is not a ground of appeal under the Act.

## **CONCLUSION**

[14] The Application is refused because the Applicant did not present a ground of appeal that falls within section 58 of the Act and has 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.