

Citation: *A. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1176

Date: October 1, 2015

File number: AD-15-1040

APPEAL DIVISION

Between:

A. 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 he was disabled as a result of ongoing pain and limitations that stemmed from an ankle injury in 1983. The Respondent denied the 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 on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a teleconference hearing and decided that the Applicant was disabled. It found that he became disabled in September 2013.

[2] The Applicant requested leave to appeal this decision to the Appeal Division of the Tribunal. He argued that he could no longer work in 2011, and that his disability pension payments should have started at that time.

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

[6] The Applicant wrote in the Application Requesting Leave to Appeal to the Appeal Division that the General Division erred in deciding that the disability pension payments would

start in January 2014; that he was disabled in 2011 when he stopped working, and the payments should have started at that time. From this, I glean that the Applicant does not wish to challenge the calculation of when disability pension payments would begin pursuant to section 69 of the *Canada Pension Plan*, rather he disagreed with the date that the General Division concluded that he became disabled.

[7] The General Division decision summarized the medical evidence and the oral testimony that was presented to it. The General Division weighed this evidence. The decision clearly set out the evidentiary basis for the conclusion that the Appellant became disabled in 2013 – that his condition was deteriorating with time, that in 2012 his doctor wrote that he was not disabled from all work, etc. Although the Applicant disagreed with the General Division decision on this issue, he pointed to no error made by the General Division in reaching this conclusion. Mere disagreement with the decision made is not a ground of appeal under the *Department of Employment and Social Development Act*.

[8] For these reasons, the application is refused.

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.