

Citation: *T. O. v. Minister of Employment and Social Development*, 2015 SSTAD 1177

Date: October 1, 2015

File number: AD-15-1028

APPEAL DIVISION

Between:

T. O.

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 injuries from a motorcycle accident and chronic obstructive pulmonary disease when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his 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*. The General Division held a teleconference hearing and on July 20, 2015 it dismissed the appeal.

[2] The Applicant requested leave to appeal this decision to the Appeal Division of the Tribunal. He clarified some of the evidence he presented to the General Division and argued that if the General Division should have asked him questions to clarify his testimony.

[3] The Respondent did not file any 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 can 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 put forward a ground of appeal that falls within section 58 of the Act and has a reasonable chance of success on appeal.

[6] The Applicant based his request for leave to appeal on his clarification of some of the evidence he presented to the General Division. Specifically, he asserted that he did not play golf twice weekly, but met with his brother and played a golf videogame with him. In addition, he did not have the strength or stability to ride a motorcycle, and the one he purchased has been sold. He also contended that the General Division Member should have asked him questions to clarify this evidence.

[7] It is the disability pension claimant who bears the onus to prove, on a balance of probabilities, that he is disabled as that term is defined in the *Canada Pension Plan*. Accordingly, it is his obligation to present his evidence to the Tribunal. The General Division Member is not required to question a claimant to ensure that all of the evidence is presented clearly. Therefore, no ground of appeal is disclosed by the Applicant's argument that the General Division did not ask him questions to clarify his evidence.

[8] It is also the claimant who must ensure that his evidence is presented to the Tribunal accurately. The presentation of new evidence, or further explanation of the evidence presented at the General Division hearing is not a ground of appeal under the *Department of Employment and Social Development Act*. The Appeal Division of the Tribunal is not to reweigh or reassess the evidence to reach a different conclusion than did the General Division (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82). Hence, this argument is not a ground of appeal that may have a reasonable chance of success on appeal.

CONCLUSION

[9] The Application is refused because the Applicant did not present a ground of appeal under the *Department of Employment and Social Development 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.