

**Citation: *J. C. v. Minister of Employment and Social Development*, 2015 SSTAD 1164**

**Date: September 30, 2015**

**File number: AD-15-864**

**APPEAL DIVISION**

**Between:**

**J. C.**

**Applicant**

**and**

**Minister of Employment and Social Development  
(Formerly known as the Minister of Human Resources and Skills Development)**

**Respondent**

**Decision by: Hazelyn Ross, Member, Appeal Division**

**Decided on the Record on September 30, 2015**

## **DECISION**

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

## **INTRODUCTION**

[2] On June 30, 2015, a Member of the General Division of the Social Security Tribunal of Canada (the Tribunal), issued her decision in which she held that the Applicant did not qualify for a *Canada Pension Plan* (CPP), disability pension. The Applicant seeks leave to appeal the decision, (the Application).

## **GROUND OF THE APPLICATION**

[3] The Applicant requested leave to appeal on the basis that his pain continues to be severe and prevents him from engaging in any substantially gainful employment. He also stated that the many medications he takes have resulted in him being depressed.

## **ISSUE**

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

## **THE LAW**

[5] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.<sup>1</sup> To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success<sup>2</sup>. In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 as well as in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case.

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<sup>1</sup> Sections 56 to 59 of the DESD Act. Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

<sup>2</sup> The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[6] There are only three grounds on which an appellant may bring an appeal. These grounds are set out in section 58 of the *Department of Employment and Social Development (DESD) Act*. They are,

- (1) a breach of natural justice;
- (2) the General Division erred in law; and
- (3) the General Division based its decision on an error of fact made in a perverse or capricious manner or without regard for the material before it.<sup>3</sup>

## ANALYSIS

[7] In order to grant leave to appeal the Tribunal must be satisfied that the appeal would have a reasonable chance of success. This means that the Tribunal must first find that, were the matter to proceed to a hearing, (a) at least one of the grounds of the Application relate to a ground of appeal; and (b) there is a reasonable chance that the appeal would succeed on this ground. For the reasons set out below the Tribunal is not satisfied that this appeal would have a reasonable chance of success.

[8] First, the Application does not disclose a ground that relates to any of the enumerated grounds of appeal. In the Application, the Applicant has done no more than state his dissatisfaction with the General Division decision, and reiterated his belief that he comes within the CPP definition of severe and prolonged. This is not sufficient to maintain a ground of appeal, certainly not one that would have a reasonable chance of success.

[9] Second, on the facts of the Applicant's case, the General Division did not commit any error of law or of fact; nor did the General Division breach a principle of natural justice. The Applicant claims to be disabled as the result of a motor vehicle accident in which he was

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<sup>3</sup> **58(1) Grounds of Appeal –**

- 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.

involved. Numerous documents in the Tribunal record indicate that the accident occurred on February 5, 2009. (GT1-21) The Applicant's minimum qualifying period (MQP), ended on December 31, 2008. This is the date by which the Applicant had to establish that he had become disabled. Division A of the CPP sets out when benefits are payable:

44. Benefits payable

(1) Subject to this Part,

(b) a disability pension shall be paid to a contributor who has not reached sixty-five years of age, to whom no retirement pension is payable, who is disabled and who

**(i) has made contributions for not less than the minimum qualifying period.**

[10] The motor vehicle accident responsible for the Applicant's medical conditions occurred after the end of the period by which he had to be found to be disabled. This was made clear in *Gaudet v. Canada (Attorney General)*, 2013 FCA 254 by Stratas, J.A. who stated this very conclusion.

[5] Under subsection 42(2) of the *Plan*, an applicant for disability benefits must demonstrate, among other things, that her disability is "severe and prolonged" such that she could not pursue regularly any substantially gainful occupation by the end of her minimum qualifying period under the *Plan*, here December 2001. (emphasis mine)

[11] While the Applicant did make contributions to the CPP, the period by which he had to have been found disabled ended about two months before his accident. Therefore, despite his pain and suffering, he does not qualify for a CPP disability pension. Thus, the General Division decision is correct. Accordingly, the Tribunal is satisfied that the Application does not disclose any ground of appeal that could have a reasonable chance of success.

## CONCLUSION

[12] The Applicant sought leave to appeal on the ground that he is still "suffering with great and severe disability" that prohibits him from seeking any employment and from meeting his basic daily needs. On examining the Tribunal record and the General Division decision, the Tribunal finds that the Application does not disclose a ground of

appeal that would have a reasonable chance of success because his medical conditions arose after the end of his MQP. Accordingly, the Application is refused.

*Hazelyn Ross*  
Member, Appeal Division