Citation: ***W. Z. v. Minister of Employment and Social Development,*** **2015 SSTAD 1209**

Date: October 14, 2015

File number: AD-15-457

APPEAL DIVISION

Between:

W. Z.

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 physical limitations and hearing loss when he applied for a *Canada Pension Plan* disability pension. The Respondent denied the application initially and after reconsideration. The Applicant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. On April 1, 2013 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 videoconference hearing and on April 8, 2015 dismissed the appeal.

[2] The Applicant first filed documents related to his application for leave to appeal on July 8, 2015. He then requested an extension of time to complete the application. The Tribunal granted an extension of time for filing the application to September 30, 2015. The remaining documents to complete the application requesting leave to appeal were filed with the Tribunal on September 28, 2015.

[3] Regarding the application, the Applicant argued that leave to appeal should be granted because the principles of natural justice were not observed at the hearing, the General Division erred in law in how it stated the legal test for disability, and he disagreed with the weight given to some of the evidence that was presented.

[4] The Respondent filed no submissions.

ANALYSIS

[5] 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.

[6] 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 that has a reasonable chance of success on appeal.

[7] The Applicant, first, argued that the General Division did not observe the principles of natural justice in this matter. He specified that the interpreter at the hearing did not translate sentences, but single words so he "was losing the sense of the question by the time the question was asked". Further, the interpreter, on at least one occasion, did not allow him to provide a full answer to a question that was asked. His counsel also contended that the form of the hearing, videoconference, did not allow the Applicant to adequately present his case or to respond to questions.

[8] While the bald allegation that an interpreter did not accurately interpret what was said in a hearing may not be sufficient for leave to appeal to be granted, I am satisfied that the arguments with respect to this issue in this case point to a ground of appeal that may have a reasonable chance of success on appeal. The Applicant may not have fully understood what was being translated. He also may not have had adequate opportunity to fully answer questions posed to him at the hearing.

[9] The Applicant also argued that because of his language difficulties, hearing the matter by videoconference was not appropriate. Without further explanation it is not clear to me how this form of hearing, by itself, would negatively impact the Applicant's ability to present his case, or meet the case against him. I am not persuaded that this ground of appeal has a reasonable chance of success on appeal.

[10] The Applicant also argued that the General Division did not properly weigh the evidence before it. In particular, he submitted that the medical evidence clearly established that he had a number of conditions that rendered him unemployable, that two doctors stated that he qualified for this disability pension, and that the General Division placed undue weight on possible medical reports that might be obtained in the future. With these arguments, the Applicant asks

this Tribunal to reevaluate and reweigh the evidence that was put before the General Division. This is the province of the trier of fact. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the General Division who made the findings of fact (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). Therefore, I find that these arguments do not raise grounds of appeal that have a reasonable chance of success.

[11] The Applicant further argued that the General Division erred in law by stating that the Applicant had to be disabled from any work whatsoever, and did not take into account all of his circumstances. The General Division decision correctly set out the legal test to be met for a claimant to be found disabled under the *Canada Pension Plan*, including that a claimant's medical conditions as well as his personal circumstances must be considered. These matters were considered by the General Division in reaching its decision. It made no error in this regard. This ground of appeal does not have a reasonable chance of success on appeal.

[12] Finally, the Applicant contended that the General Division erred when it concluded that he had some residual capacity to work because he was able to care for his injured wife. The ability to care for another person may demonstrate some capacity to work in a substantially gainful occupation. However, in this case the General Division decision did not set out the evidentiary basis upon which it reached this conclusion. Without this, it is not clear why this conclusion was reached. In *R. v. Sheppard* 2002 SCC 26 the Supreme Court of Canada stated that one of the purposes for giving written reasons for a decision is so that the parties understand why a decision was reached. The General Division decision on this issue may not have accomplished this. Hence, I am satisfied that this ground of appeal may have a reasonable chance of success on appeal.

CONCLUSION

[13] The Application is granted for the reasons set out above.

[14] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[15] If the Applicant wishes to rely on the arguments above regarding interpretation at the hearing of this appeal, it would be helpful if a transcription of the hearing together with an explanation of each alleged error made by the interpreter were filed with the Tribunal with the submissions on the remaining issues.

[16] The parties may also file submissions on what form the hearing of this appeal should take.

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.