

**Citation:** *M. S. v. Minister of Employment and Social Development*, 2015 SSTAD 1231

**Date:** October 19, 2015

**File number:** AD-15-1075

**APPEAL DIVISION**

**Between:**

**M. 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 as a result of falling at work and injuring one leg in 1997, with the injury aggravated in 2006 and 2008 by motor vehicle accidents when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her claim 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 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a videoconference hearing and dismissed the appeal on July 8, 2015.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. She argued that the General Division did not consider that her workplace injury was a long time ago (1997) and that she had ongoing pain since then, and that her condition was aggravated by the subsequent car accidents.

[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 (see the Appendix to this decision). Hence 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.

[6] The Applicant argued that the General Division did not consider that she has suffered from pain since her workplace accident, and that it was aggravated by the subsequent car accidents. The General Division decision contains a detailed summary of the oral and written evidence that was before it. This included that Applicant's testimony and numerous medical reports, although none were dated at the time of the workplace accident. This evidence was considered and weighed by the General Division in making its decision. The Applicant did not suggest that the General Division made any error with respect to its consideration of this evidence, or that it made any erroneous findings of fact. I am not persuaded that the General Division decision contains any error that would point to a ground of appeal that falls within section 58 of the Act.

[7] The application is therefore dismissed.

*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.