

Citation: *P. S. v. Minister of Employment and Social Development*, 2015 SSTAD 1250

Date: October 23, 2015

File number: AD-15-1094

APPEAL DIVISION

Between:

P. 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 he was disabled by unrelenting low back and left leg pain, depression and back injuries 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 General Division of the Social Security Tribunal. The General Division held a videoconference hearing and dismissed the appeal.

[2] The Applicant sought leave to appeal to the Appeal Division of the Tribunal. He argued that the General Division did not observe the principles of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, and that it based its decision on erroneous findings of fact that were made in a perverse or capricious manner or without regard to the material before it.

[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. 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 (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.

[6] First, the Applicant argued that the General Division did not observe the principles of natural justice, or erred with respect to its jurisdiction. He did not, however, set out how this was to have occurred. Simply a bald allegation that an application for leave to appeal is based on section 58(1)(a) of the Act is insufficient. This does not disclose any ground of appeal that may have a reasonable chance of success on appeal.

[7] The Applicant also alleged that the General Division erred by not considering the totality of the evidence that was before it in deciding that he was not disabled. He specifically referred to a report penned by Dr. Bariania that stated that the Appellant's prognosis was poor, reports by Dr. Dhaliwal that diagnosed the Appellant with major depressive disorder and stated that he could not work because of depression, and a report by Dr. Bosy that set out that the Appellant scored as severely depressed on diagnostic tests.

[8] The Federal Court of Appeal has decided that the Tribunal is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence need not be mentioned in the written decision (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). While I appreciate that the specific reports referred to in the application requesting leave to appeal may not have been mentioned in the decision, I am satisfied that this evidence was considered by the General Division in reaching its decision. In particular, the General Division referred to other reports written by Dr. Bariania and to the conclusions he drew regarding the Appellant's diagnosis and proposed treatment. The General Division decision also referred specifically to a report by Dr. Dhaliwal that was penned prior to the minimum qualifying period. The doctor's conclusions did not change in subsequent reports. I am also satisfied that Dr. Bosy's evidence was considered. This doctor examined the Appellant with respect to his mental health. The General Division acknowledged the diagnosis made in this respect, the treatment offered and the Applicant's non-compliance with the treatment recommendations.

[9] For these reasons, I am not persuaded that this ground of appeal points to any erroneous finding of fact made in the General Division decision. This ground of appeal does not have a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is refused as the Applicant has not presented a ground of appeal 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.