

Citation: *M. B. v. Minister of Employment and Social Development*, 2015 SSTAD 1251

Appeal No. AD-15-1049

BETWEEN:

M. B.

Applicant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

**SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision**

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: October 22, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated July 20, 2015. The General Division conducted a videoconference hearing on March 18, 2015 and determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not “severe” at her minimum qualifying period of December 31, 2011. Counsel for the Applicant filed an application requesting leave to appeal on September 23, 2015. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[2] Does the appeal have a reasonable chance of success?

SUBMISSIONS

[3] Counsel for the Applicant submits the following:

- (a) the Applicant has a severe medical problem and vocational profile that prevents her from obtaining any gainful employment;
- (b) the Applicant cooperated to the best of her ability with vocational attempts and was unable to continue due to her medical impairments. The Applicant exhausted all forms of medical care offered by her physicians; and
- (c) the Applicant’s mental state and physical symptoms all played a role in her being unable to work. He submits that the Applicant suffers from a severe physical impairment that is preventing her from working in any gainful occupation; and
- (d) the decision of the General Division was not reasonable since the Applicant remains unable to be gainfully or substantially employed within her minimum

qualifying period. Counsel submits that the Applicant's condition is prolonged and severe as defined within the *Canada Pension Plan*.

[4] The Respondent has not filed any written submissions.

ANALYSIS

[5] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out that the only grounds of appeal are the following:

- (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.

[7] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

[8] Here, counsel for the Applicant has not specified how the reasons fall into any of the grounds of appeal. Counsel has not identified any errors of law which the General Division might have made, nor does he allege that the General Division based its decision on an erroneous finding of fact. There are no submissions either that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[9] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some particulars of the error or failing committed by the General Division which fall into the enumerated grounds of appeal under subsection 58(1) of the DESDA, otherwise the submissions are deficient.

[10] The Applicant's submissions call for a reassessment and re-weighing of the evidence, which is beyond the scope of a leave application.

CONCLUSION

[11] As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, I am not satisfied that the appeal has a reasonable chance of success and I therefore refuse the Application for leave.

Janet Lew

Member, Appeal Division