

Citation: *E. S. v. Minister of Employment and Social Development*, 2015 SSTAD 1276

Date: November 2, 2015

File number: AD-15-1115

APPEAL DIVISION

Between:

E. 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 by fibromyalgia, incontinence, back pain and shoulder injury 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 Social Security Tribunal, and her appeal was completed eight days beyond the time permitted to file an appeal. The General Division refused to extend the time to file the appeal.

[2] The Applicant requested leave to appeal to the Appeal Division the decision refusing to extend time to file the appeal. In her application requesting leave to appeal she set out further medical conditions that afflicted her and wrote that more medical information would be provided. She also included medical reports with this application.

[3] The Respondent filed no submissions with respect to this request for leave to appeal.

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. It says:

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.

Therefore I must decide if a ground of appeal that falls within section 58 of the Act and that has a reasonable chance of success has been disclosed.

[6] The Applicant wrote in her application that she had new medical information which disclosed two new medical conditions. She argued that these conditions, together with those already presented to the General Division, made her life very difficult. She also wrote that further medical reports would be provided and included some medical reports with her application. None of this points to any error made by the General Division, nor does it suggest that the General Division did not observe the principles of natural justice. Leave to appeal cannot be granted on the basis of the presentation of this information.

[7] However, a review of the General Division decision may contain an error in law. The General Division decision correctly set out the law with respect to the extension of time for an appeal. It listed factors that were to be considered. It concluded, based on the evidence, that the Applicant had a continuing intention to pursue the appeal, an arguable case and that the Respondent would not be prejudiced if the matter were to proceed.

[8] The Applicant filed all of her appeal documents within the time permitted except for the reconsideration decision. This decision was filed shortly after the Tribunal requested it. The completed application was filed only eight days after the time to do so had expired. The Applicant explained that her application was filed late because she used the incorrect forms. The General Division did not accept this explanation as there was no evidence to support it in the file. On this basis, it refused to extend the time to file the appeal.

[9] The General Division did not explain how it weighed the factors that it considered in making its decision. It also did not consider the interests of justice in reaching its decision. Therefore, leave to appeal is granted as this may have been an error in law.

[10] I note that when the Applicant filed her Application Requesting Leave to Appeal to the Appeal Division, not all pages of this form were filed. I am satisfied, however, based on the materials filed, that there was sufficient information upon which to make my decision regarding the request for leave to appeal. The Applicant should ensure that all documents are properly filed with the Tribunal when she files her written submissions on the merits of the appeal.

CONCLUSION

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

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

Valerie Hazlett Parker
Member, Appeal Division