

**Citation: *T. M. v. Minister of Employment and Social Development*, 2015 SSTAD 1286**

**Date: November 4, 2015**

**File number: AD-15-976**

**APPEAL DIVISION**

**Between:**

**T. M.**

**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 degenerative disc disease when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his 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* in April 2013. The General Division held a teleconference hearing and on June 17, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. He filed all the necessary information to request leave to appeal after it appeared that the time to do so had expired. Regarding the request for leave to appeal the Appellant stated that while he has been fortunate to be able to control his back pain with limited medication use, he was not capable of employment, and he would not be a reliable employee.

[3] The Respondent filed no submissions.

### ANALYSIS

[4] The General Division decision was dated June 17, 2015. The Applicant filed all of the information necessary to request leave to appeal to the Appeal Division of the Tribunal on October 16, 2015. The *Department of Employment and Social Development Act* governs the operation of the Tribunal. Section 57 of the Act provides that an application requesting leave to appeal to the Appeal Division must be filed within 90 days of the decision being communicated to the claimant. This time can be extended, but not for more than one year.

[5] In this case, the Applicant filed all of the necessary documents to request leave to appeal with the Tribunal approximately 30 days after the time to do so had expired. I note, however, that he first filed a letter requesting leave to appeal with the Tribunal in August 2015, which was within the time permitted. He filed further information shortly after being reminded to do so by the Tribunal. Therefore, I am satisfied that the time for the Appellant to file the application

requesting leave to appeal should be extended in this case as it is in the interests of justice to do so.

[6] 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.

[7] Section 58 of the Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (see the Appendix to this decision). Therefore, I must decide if the Applicant has presented a ground of appeal that falls within section 58 of the Act and that may have a reasonable chance of success on appeal.

[8] The Applicant wrote in his letter requesting leave to appeal that although he is able to manage his pain with minimal medication he was not capable of working, and that he would not be a reliable employee. These arguments were presented to the General Division and considered by it in reaching its decision. Their repetition is not a ground of appeal under the Act, as it does not point to any error of law, error of fact or breach of the principles of natural justice by the General Division.

[9] Therefore, the application for leave to appeal is refused.

*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.