

**Citation: *A. P. v. Minister of Employment and Social Development*, 2015 SSTAD 1328**

**Date: November 16, 2015**

**File number: AD-15-1184**

**APPEAL DIVISION**

**Between:**

**A. P.**

**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 as a result of a variety of work-related injuries and heart 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 in April 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and on July 31, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal this decision to the Appeal Division of the Tribunal. He argued that he was disabled, that his health was declining, and that his family physician had referred him to a specialist. He requested that his claim be reconsidered.

[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 can be considered to grant leave to appeal a decision of the General Division (the section is set out in 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.

[6] In the application requesting leave to appeal the Applicant wrote that his health was declining, that he was unable to work and that he was entitled to a disability pension. This was also presented to the General Division. The General Division decision summarized all of the evidence before it and weighed that evidence to reach its decision. The Applicant did not suggest that the General Division made any error in so doing. The repetition of the legal position he took before the General Division is not a ground of appeal under section 58 of the Act.

[7] The Applicant also wrote that his doctor had referred him to a specialist and that he was waiting for results from further medical tests. The promise of new or further evidence is not a ground of appeal set out in section 58 of the Act. Leave to appeal cannot be granted on this basis.

[8] The Applicant also complained that he knew of others who had received a disability pension because their doctors would write anything on forms or letters. It is not for the Appeal Division of the Tribunal to assess what may have happened in another matter. Each case is to be decided based on the law and the evidence before it. The Applicant did not contend that the General Division did not do this in his case. This argument is also not a ground of appeal under the Act.

[9] Finally, the Applicant requested that his claim be reconsidered. While I have sympathy for his circumstances, the Act does not permit a Member of the Appeal Division to re-examine and reweigh the evidence that was presented to the General Division to reach a different conclusion (see *Simpson v. Canada (Attorney General)*, 2012 FCA 82). Similarly, leave to appeal cannot be granted on compassionate grounds.

[10] The Application is refused as the Applicant has not put forward a ground of appeal that falls within section 58 of the Act and 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.