

Citation: *P. H. v. Minister of Employment and Social Development*, 2015 SSTAD 1341

Date: November 19, 2015

File number: AD-15-1214

APPEAL DIVISION

Between:

P. H.

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 physical injuries from a work accident and mental illness 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 General Division of the Social Security Tribunal. The General Division held a videoconference hearing and on October 8, 2015 dismissed the appeal.

[2] The Applicant sought leave to appeal this decision to the Appeal Division of the Tribunal. He summarized his medical condition and the arguments he advanced at the General Division hearing. He contended that he could not attend any work on a regular basis and that the fact that he could complete some household chores was not equivalent to being able to work in a substantially gainful occupation.

[3] The Respondent filed no submissions regarding the request for leave to appeal.

ANALYSIS

[4] For the Applicant 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 (see 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] In the application that requested leave to appeal the Applicant again contended that he suffered from a severe and prolonged disability that existed prior to the Minimum Qualifying

Period (the date by which a claimant must be found to be disabled in order to receive a *Canada Pension Plan* (CPP) disability pension). He summarized his limitations to support this argument. This argument and evidence were before the General Division and considered by it when it made the decision in this matter. It is for the General Division to receive the evidence of the parties, weigh it, and render an impartial decision based on the law and the evidence. It is not for the Appeal Division when deciding whether to grant leave to appeal to reweigh the evidence to perhaps reach a different conclusion (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). These arguments are therefore not grounds of appeal under the Act that may have a reasonable chance of success on appeal.

[7] The Applicant also argued that leave to appeal should be granted on the basis that a claimant's evidence of his ability to complete household chores at his own pace does not necessarily demonstrate that he had the capacity to complete assigned duties in the marketplace. I agree that this may be correct, depending on the facts of a case. In this case, the General Division considered all of the Applicant's evidence, including his ability with respect to household chores, his attendance at retraining and his physical limitations in reaching its decision. Again, it is not for the Appeal Division to reweigh this evidence. I am not satisfied that this is a ground of appeal that may have a reasonable chance of success on appeal.

[8] The Applicant also relied on the *A.K. v. Minister of Human Resources and Skills Development* (CP 25905) decision to support his claim. In that case, the decision maker concluded that the claimant's ability to work twelve hours each week did not preclude a finding that she was disabled under the CPP. This decision is not binding on the General Division. Each case turns on its own facts. The Applicant did not suggest that the General Division erred in law by not relying on this case, and I do not find that it so erred. Leave to appeal is not granted on this basis.

[9] The Applicant further argued that he could not attend work regularly; and that being able to attend work as required is to be considered in deciding if a claimant is disabled under the CPP. I agree, and the case law supports this. The Applicant presented this argument to the General Division. The General Division decision specifically considered this and reached a reasoned conclusion in this regard. The Applicant did not contend that the General Division

erred in law or in fact on this issue. The repetition of this argument is not a ground of appeal under the Act.

CONCLUSION

[10] The Application is refused because the Applicant did not present 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.