Citation: ***E. D. v. Minister of Employment and Social Development,*** **2015 SSTAD 1324**

Date: November 12, 2015

File number: AD-15-1148

APPEAL DIVISION

Between:

E. D.

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 back pain from a work injury when she applied for a *Canada Pension Plan* disability pension. The Respondent denied her claim initially and upon reconsideration. The Applicant appealed the reconsideration decision to the General Division of the Social Security Tribunal. On September 16, 2015 the General Division dismissed the Applicant's appeal on the basis of the written record.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. She argued that the General Division should have heard her evidence, and that some of the decisions were inaccurate.

[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). Hence, I must decide if the Applicant has 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.

[6] The Applicant first argued that she suffered from severe back pain, and that she had produced adequate paperwork to substantiate this. The General Division need not refer, in its written reasons, to each and every piece of evidence that was presented (*Simpson v. Canada*

(Attorney General), 2012 FCA 82). The General Division decision summarized the evidence that was presented. The Applicant did not point to any evidence that was not considered. I am not satisfied that the repetition of the legal position she put forward at the General Division is a ground of appeal under the Act.

[7] The Appellant also suggested that her medical treatment providers should have been subpoenaed to give evidence. It is up to a *Canada Pension Plan* disability pension claimant to present their case. It is not for the Tribunal to ask witnesses to attend and testify. This argument does not disclose a ground of appeal under the Act.

[8] The Applicant also contended that the General Division erred as it decided the matter based on the written record instead of hearing her evidence orally. The *Social Security Tribunal Regulations* provide that matters can be decided based on the written record, by written questions and answers, by teleconference, videoconference or an in person hearing. It is for the General Division Member to decide what form the hearing will take. This is a discretionary decision. The Applicant did not suggest that the General Division Member improperly exercised his discretion in making this decision, or that the decision to decide the matter on the basis of the written record was a palpable and overriding error. There was nothing before me that indicated that the decision regarding the form of the hearing in this matter was unreasonable. This ground of appeal therefore does not have a reasonable chance of success on appeal.

[9] The Applicant also disagreed with some of the statements made in the General Division decision. Mere disagreement with parts of the written reasons for decision is not a ground of appeal that falls within section 58 of the Act.

[10] Finally, the Applicant submitted that the General Division conclusion that she had not attempted to work within her restrictions was inaccurate. She was retrained to work as a medical receptionist. This was the position that she attempted to work at when she returned to work. She could not complete the job due to increase back pain. This is set out in the decision. The General Division concluded that the specific jobs the Appellant tried also had physical requirements that were beyond her restrictions, and on this basis concluded that she had not attempted to work within her restrictions. The reasoning for this conclusion is clear. The Appellant's argument does not point to any erroneous finding of fact made in a perverse or

capricious manner or without regard to the material before the General Division. This is not a ground of appeal that may have a reasonable chance of success on appeal.

CONCLUSION

[11] The Application is refused as 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.