

Citation: *M. B. v. Minister of Employment and Social Development*, 2015 SSTAD 1342

Date: November 19, 2015

File number: AD-15-1215

APPEAL DIVISION

Between:

M. B.

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 stopped working in 1999 when the business she worked for closed. She returned to the workforce in 2004 as a baker, and worked there until she could no longer do so due to pain in her wrist. She claimed that she was disabled by this 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 General Division of the Social Security Tribunal. The General Division held a teleconference hearing and on October 21, 2015 dismissed her appeal.

[2] The Applicant filed an application for leave to appeal the General Division decision to the Appeal Division of the Tribunal. She wrote that the decision was not right, that she had paid into the *Canada Pension Plan* like others, and her condition was not going to get any better.

[3] The Respondent filed no submissions regarding the 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. 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). I must therefore 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] The Applicant disagreed with the decision made by the General Division. She did not, however, suggest that the General Division made any factual errors. She did not contend that it did not observe the principles of natural justice which are concerned with ensuring that parties have an opportunity to present their case, know the case against them and have an impartial decision made based on the facts and the law. She also did not suggest that the General Division made any error in law. On reading the decision I did not find any such errors.

[7] I appreciate the Applicant's frustration. However, the General Division also correctly stated that the Social Security Tribunal was created by legislation. As such it only has the authority to grant the relief set out in the Act. This does not include any power to grant relief to a disability pension claimant based on extenuating circumstances or compassion.

[8] Leave to appeal must therefore be dismissed. The Applicant has not presented any 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.