

**Citation: *D. C. v. Minister of Employment and Social Development*, 2015 SSTAD 1369**

**Date: November 30, 2015**

**File number: AD-15-1066**

**APPEAL DIVISION**

**Between:**

**D. C.**

**Applicant**

**and**

**Minister of Employment and Social Development**

**Respondent**

**Leave to Appeal**

**Decision by: Hazelyn Ross, Member, Appeal Division**

## **DECISION**

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

## **INTRODUCTION**

[2] In a decision issued September 3, 2015, a Member of the General Division of the Social Security Tribunal of Canada, (the Tribunal), issued a decision dismissing the Applicant's appeal of a reconsideration decision that found he was not entitled to a *Canada Pension Plan* (CPP) disability pension. The Applicant seeks leave to appeal the decision, (the Application).

## **GROUND OF THE APPLICATION**

[3] The Applicant relies on subsection 58(1)(c) of the *Department of Employment and Social Development Act*, (the DESD Act), namely, that 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.

## **ISSUE**

[4] The Appeal Division must decide if the appeal has a reasonable chance of success.

## **APPLICABLE LAW**

[5] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.<sup>1</sup> To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success<sup>2</sup>. In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 as well as in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to

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<sup>1</sup> Sections 56 to 59 of the DESD Act. Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

<sup>2</sup> The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

an arguable case. In *Canada (Attorney General) v. Carroll*<sup>3</sup> the Federal Court opined that, “an Applicant will raise an arguable case if she [or he] ... raises an issue not considered ... or can point to an error” in the decision.

[6] There are only three grounds on which an appellant may bring an appeal. These grounds are set out in section 58 of the DESD Act, namely, breaches of natural justice; error of law; or error of fact.<sup>4</sup> However, to grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. This means that the Appeal Division must first find that, were the matter to proceed to a hearing, at least one of the grounds of the Application relates to a ground of appeal and that there is a reasonable chance that the appeal would succeed on this ground.

## **ANALYSIS**

[7] The Applicant submitted that the General Division breached subsection 58(1)(c) of the DESD Act in the following manner. He argued that the General Division misinterpreted facts and misunderstood the sequence of events in his case and he submitted that contrary to the Member’s conclusions he did make attempts to address his depression and Post-Traumatic Stress Disorder (PTSD). He did not improvise regarding his medications and never refused treatment.

[8] The Appeal Division is not persuaded of the Applicant’s position. While the Applicant has submitted that his evidence has been misinterpreted, this argument is not supported by the decision which demonstrates that the General Division Member considered the Applicant’s testimony regarding his attempts to treat his depression and PTSD. Nor has the Applicant set out what steps he took that the Member ignored.

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<sup>3</sup> *Canada (Attorney General) v. Carroll*, 2011FC1092 para 14.

<sup>4</sup> **58(1) Grounds of Appeal –**

- a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

[9] To the contrary of the Applicant's contention the Member found that there was valid reason to reject the Applicant's explanations for why he did not continue treatment sessions with Dr. Jordan, when she had been willing to treat him on a *pro bono* (free) basis. The Appeal Division finds no error in the Member's assessment of this evidence.

[10] The General Division Member concluded that the Applicant stopped taking mood stabilizing medication without consulting Dr. Jordan. The Applicant disputes this finding. However, this was not the only finding concerning the Applicant's failure to adhere to treatment recommendations that the General Division made.

[11] The General Division Member found that the Applicant had also failed to comply with treatment recommendations made by Dr. Kuzenko as well as those that had been made by his family physician, Dr. Ross. Thus, even, if the General Division Member had erred, which the Appeal Division does not find, the error is not so material to the outcome of the decision that it would have changed it. The General Division did record that the Applicant testified that, as of the date of the hearing, he had not implemented Dr. Kuzenko's treatment recommendations for counselling, even though Dr. Kuzenko had provided him with a list of free resources for such counselling in the community (para. 12). Accordingly, the Appeal Division is not satisfied that the Applicant has raised an arguable case in this regard.

## **CONCLUSION**

[12] The Applicant submitted that the General Division based its decision on erroneous findings of fact that it made perversely or capriciously or without regard for the material before it. On the basis of the foregoing, the Appeal Division finds that the Applicant has not raised an arguable case. The Appeal Division is not satisfied that his submissions disclose a ground of appeal that would have a reasonable chance of success. Accordingly, the Application is refused.

*Hazelyn Ross*  
Member, Appeal Division