Citation: ***D. F. v. Minister of Employment and Social Development,*** **2015 SSTAD 1373**

Date: November 30, 2015

File number: AD-15-1195

APPEAL DIVISION

Between:

D. F.

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 fibromyalgia, gluten intolerance and numerous other medical conditions 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 Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a videoconference hearing and on August 5, 2015 dismissed the appeal.

[2] The Applicant filed documents requesting leave to appeal the General Division decision to the Appeal Division on November 4, 2015. The appeal was incomplete. The Social Security Tribunal notified the Applicant that the appeal was incomplete and set out what further information was required. It also set out that if the required information was received by December 10, 2015 the application for leave to appeal would be considered to have been filed within the time permitted by the *Department of Employment and Social Development Act*. The required information was filed with the Tribunal within this time period.

[3] The Applicant argued that leave to appeal should be granted because she suffered from two hereditary conditions that were disabling, being fibromyalgia and gluten intolerance, that it was ridiculous for the General Division to conclude that her pain was not severe, and that she had an arguable case that was wrongly dismissed.

[4] The Respondent filed no submissions.

ANALYSIS

[5] 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.

[6] 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 under section 58 of the Act and that may have a reasonable chance of success on appeal.

[7] First, the Applicant filed all of the information required to complete the application requesting leave to appeal within the time period give to do so. The application is therefore considered to have been filed on time. I need not decide if the Applicant should be granted an extension of time to file the application for leave to appeal

[8] Next, the Applicant argued that leave to appeal should be granted because she suffered from two hereditary conditions that were disabling, that it was ridiculous for the General Division to have decided that her pain was not severe, and that her appeal had been wrongly dismissed. The Applicant also included a number of medical records with her application. The General Division decision summarized all of the evidence that was presented to it. It considered this evidence when it reached its decision. I accept that the Applicant disagreed with the decision reached. However, disagreement with the General Division decision is not a ground of appeal that can be considered under the Act. The Applicant did not contend that the General Division made any erroneous findings of fact in a perverse or capricious manner or without regard to the material before it, that it made any errors in law or did not observe the principles of natural justice. Therefore, these arguments are not grounds of appeal under the Act.

[9] The Applicant also included a large number of medical notes and documents with her application requesting leave to appeal. It is not clear to me whether these documents were presented to the General Division. The Applicant did not suggest that they were and that they were not properly considered. If they were not presented to the General Division, their presentation at this time does not assist the Applicant. The presentation of new evidence is not a ground of appeal that can be considered under section 58 of the Act.

CONCLUSION

[10] The Application is refused as the Applicant did not present any grounds of appeal that fall under 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.