

**Citation: *J. O. v. Minister of Employment and Social Development*, 2015 SSTAD 1384**

**Date: December 1, 2015**

**File number: AD-15-1161**

**APPEAL DIVISION**

**Between:**

**J. O.**

**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 mental illness 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* in April 2013. The General Division held a videoconference hearing and on July 2, 2015 dismissed the appeal.

[2] The Applicant sought leave to appeal the General Division decision to the Appeal Division of the Tribunal. She argued that leave to appeal should be granted because the General Division breached the principles of natural justice or otherwise acted beyond its jurisdiction, and that it made erroneous findings of fact.

[3] The Respondent did not file any 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. 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 (this is reproduced in 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 may have a reasonable chance of success on appeal.

[6] First, the Applicant argued that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it when it based its decision on her testimony and not the medical evidence that she was not able to work. The General Division decision summarized all of the evidence that was before it. This included the Appellant's testimony regarding her functional abilities and limitations including her inability to organize herself, and the medical evidence that stated that she was unable to return to her prior work, that recommended a gradual return to work program, and made other statements regarding her ability to work in her prior job and other positions. With this argument, the Appellant essentially asked the Appeal Division to reweigh the evidence that was presented to the General Division. It is for the General Division, as the trier of fact, to receive the evidence of the parties, weigh it and reach a decision. It is not for the Tribunal deciding whether to grant leave to appeal to reweigh the evidence or explore the merits of the General Division decision (*Misek v. Canada (Attorney General)*, 2012 FC 890). Therefore, this ground of appeal does not have a reasonable chance of success on appeal.

[7] The Applicant also submitted that the General Division erred as it reported that Larry Marthichenko was a psychiatrist when he is a psychologist and it referred to Dr. Raveendran by the incorrect sex. I accept that these were errors in the decision. These errors were not material to the decision. There was no indication that the decision in this case was based on these errors. Therefore, leave to appeal is not granted on this basis.

[8] The Applicant also argued that the General Division breached the principles of natural justice and acted beyond its jurisdiction because it did not acknowledge that she resides in a remote area of Northern Ontario that does not have good access to mental health services. The principles of natural justice are concerned with ensuring that parties to litigation have the opportunity to fully present their case, meet the case against them and have a decision rendered by an impartial arbiter based on the law and the facts. The argument presented by the Applicant with respect to the availability of mental health services does not point to these principles. It also does not suggest that the General Division acted in any way outside of its jurisdiction. The General Division decision set out the mental health treatment that was recommended and obtained by the Applicant. The lack of availability of such services was not referred to in the

General Division decision. Accordingly, this ground of appeal does not have a reasonable chance of success on appeal.

[9] Finally, the Applicant argued that the General Division erred as it placed more “valor” in the opinion of the MHU nurse than the psychiatrist or psychologist. The General Division decision set out clearly that it placed greater weight on this evidence and that of Dr. Martichenko because they saw the Appellant for a number of sessions over a one year period on a consistent basis. The reasoning is clear and logical. Again, it is not for the Appeal Division of the Tribunal to reweigh the evidence that was before the General Division to perhaps reach a different conclusion. This ground of appeal does not have a reasonable chance of success on appeal.

## **CONCLUSION**

[10] 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.