

**Citation: *A. C. v. Minister of Employment and Social Development*, 2015 SSTAD 1415**

**Date: December 10, 2015**

**File number: AD-15-1285**

**APPEAL DIVISION**

**Between:**

**A. C.**

**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 caused by degenerative disc disease and a congenital condition 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 of Canada pursuant to the *Jobs, Growth and Long-term Prosperity Act* in April 2013. The General Division held a teleconference hearing and on August 31, 2015 dismissed the appeal.

[2] The Applicant sought leave to appeal the General Division decision to the Appeal Division of the Tribunal. She contended that the General Division erred in law.

[3] The Respondent filed no submissions regarding the application 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 (this is set out in the Appendix to this decision). Accordingly, 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 argued that the General Division erred in law in three ways. First, she contended that it erred by not finding that her degenerative spine condition which caused pain was severe under the *Canada Pension Plan*. The General Division decision summarized the

evidence that was before it. It weighed this evidence and reached a decision based on the law and the evidence. Assigning weight to evidence, whether oral or written is the province of the trier of fact, the General Division in this case. It is not for the Tribunal, when deciding whether to grant leave to appeal, to reweigh the evidence to perhaps reach a different conclusion (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). This argument does not point to an error in law, or to any other ground of appeal that can be considered under the Act.

[7] The Applicant also suggested that the General Division erred by not properly weighing her inability to work competitively on a regular and consistent basis. Again, this argument asks the Appeal Division to reweigh the evidence that was presented to the General Division to reach a different conclusion. For the reasons set out above, I am not satisfied that this is a ground of appeal under the Act that may have a reasonable chance of success on appeal.

[8] Finally, the Applicant contended that the General Division erred by not considering her disability in a “real world” context. The decision considered the Applicant’s medical conditions and her personal circumstances, including that she was 53 years of age at the MQP, had a post-secondary education and varied work experience. It also considered that she could not find work and concluded, based on the law, that labour market factors were not a relevant consideration. I am not satisfied that this ground of appeal points to an error made by the General Division. It does not have a reasonable chance of success on appeal.

## **CONCLUSION**

[9] The Application is refused as the Applicant has not presented a ground of appeal 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.