

Citation: *I. W. v. Minister of Employment and Social Development*, 2015 SSTAD 1421

Appeal No: AD-15-1114

BETWEEN:

**I. W.**

Applicant

and

**Minister of Employment and Social Development  
(formerly Minister of Human Resources and Skills Development)**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION  
Appeal Division – Leave to Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: December 11, 2015

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division dated July 29, 2015. The General Division conducted an in-person hearing on July 13, 2015 and determined that the Applicant was not eligible for a Canada Pension Plan disability pension, as it found that his disability was not “severe” at that time. The Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on October 13, 2015. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

### **ISSUE**

[2] Does the appeal have a reasonable chance of success?

### **SUBMISSIONS**

[3] The Application is seeking an appeal on the basis of the “evidence and deterioration of life quality and the length of time (seven years) and a cursory interview by [the General Division]. The Applicant submits that there is supporting medical documentation and is requesting a reconsideration.

[4] The Respondent has not filed any written submissions.

### **ANALYSIS**

[5] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* sets out the grounds of appeal as being limited to the following:

- (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.

[7] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

[8] For the most part, the Applicant's submissions call for a reassessment and reweighing of the evidence. The role of the Appeal Division is to determine if the General Division committed a reviewable error under subsection 58(1) of the DESDA, and if so, to provide a remedy for that error. The Appeal Division has no jurisdiction to intervene otherwise or to hear the appeal on a *de novo* basis. I am not satisfied that the appeal has a reasonable chance of success on these grounds.

[9] The Applicant does not allege that he was denied the opportunity to present his case but he submits that the General Division conducted only a "cursory interview". In other words, he alleges that the General Division failed to observe a principle of natural justice.

[10] As my colleague Pierre Lafontaine aptly described it in *D.P. v. Canada Employment Insurance Commission and D.R.A. Holdings Ltd.* (November 23, 2015), currently unreported (AD-15-989), the principles of natural justice exist to ensure that everyone who falls under the jurisdiction of a judicial or quasi-judicial forum is given adequate notice to appear and is allowed every reasonable opportunity to present his case and the decision given is free of bias or the reasonable apprehension or appearance of bias.

[11] I am unaware of any authorities that require a decision-maker to ask exhaustive questions of a witness, particularly where the decision-maker is satisfied that he has all of the necessary evidence to determine the issues before him. The General Division indicated that it had arranged for an in-person hearing, in part to address what it perceived as gaps in the information in the hearing file and/or a need for clarification. From what I can determine, there is no indication in the decision that the General Division was left with any outstanding gaps in information.

[12] The Applicant has not identified any further evidence he might have given, nor has he identified any particular issues on which adverse findings might have been made for which he had not been provided with a sufficient opportunity to address. Had the General Division, for instance, made particular findings without having provided the Applicant an opportunity to address them, then this might have qualified as a breach of the principles of natural justice. The General Division was under no obligation to pursue further questioning, unless perhaps the Applicant had indicated that there was more evidence and that it was of some probative value. The fact that the General Division might not have posed more questions of the Applicant however does not on its own fall within a breach of the principles of natural justice.

[13] I am not satisfied that the appeal has a reasonable chance of success on this ground.

[14] Finally, it should be noted that the Applicant has a minimum qualifying period of December 31, 2017, which obviously has yet to pass. He remains eligible to qualify for a Canada Pension Plan, provided that he meets the requirements under the *Canada Pension Plan*. If the Applicant intends to file a new application for a Canada Pension Plan disability pension, he would be well-advised to seek representation to assist him.

## **CONCLUSION**

[15] The application for leave to appeal is refused.

*Janet Lew*

Member, Appeal Division