

Citation: *I. B. v. Minister of Employment and Social Development*, 2015 SSTAD 1479

Date: December 29, 2015

File number: AD-15-1143

APPEAL DIVISION

Between:

I. B.

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 knee, back, shoulder and neck pain 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 July 26, 2015 dismissed her appeal.

[2] The Applicant filed an application requesting leave to appeal the General Division decision to the Appeal Division of the Tribunal. By letter dated November 12, 2015 the Appeal Division of the Tribunal requested that the applicant file a further explanation of the grounds of appeal set out in the application requesting leave to appeal, and inviting the Respondent to file submissions. This was to be filed with the Tribunal on or before December 4, 2015. Counsel for the Applicant wrote to the Tribunal on December 4, 2015 and requested an extension of time to file her submissions until December 14, 2015. This extension was granted to both parties. Neither party filed any further materials with the Tribunal.

ANALYSIS

[3] 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.

[4] 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.

[5] The Applicant claimed that leave to appeal should be granted because the General Division “erred in law in making its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it”. She also argued that the General Division erred in law in making its decision, and that it based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it. The Applicant did not provide any indication of how the General Division was to have erred in law or what erroneous findings of fact were made. I have read the General Division decision and did not find any error of law. The mere allegation that the General Division erred in fact or in law is not sufficient to establish a ground of appeal under section 58 of the Act. On the material before me, I am not persuaded that the General Division decision contained any errors.

[6] Leave to appeal is refused because the Applicant did not present any ground of appeal that falls within section 58 of the Act and that may have a reasonable chance of success.

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.