

Citation: *L. C. v. Minister of Employment and Social Development*, 2015 SSTAD 1460

Date: December 21, 2015

File number: AD-15-1196

APPEAL DIVISION

Between:

L. 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 as a result of physical injuries and a seizure disorder 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 General Division of the Social Security Tribunal. The General Division held a teleconference hearing and on October 9, 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 the General Division failed to observe a principle of natural justice and erred in its decision.

[3] The Respondent filed no submissions regarding the application requesting leave to appeal.

ANALYSIS

[4] 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 (see the Appendix to this decision). Accordingly I must decide if the Applicant has presented a ground of appeal that is 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 failed to observe a principle of natural justice. These principles are concerned with ensuring that parties to a disability pension claim are given the opportunity to present their case, know and respond to the case against them

and to have the decision made by an impartial decision maker based on the law and the facts. The Applicant in this case did not explain how these principles were not observed by the General Division. There is no indication in the decision that these principles were not observed. Without some explanation of the basis for this ground of appeal I am not persuaded that it has a reasonable chance of success on appeal.

[7] In her request for leave to appeal the Applicant also presented evidence that she wrote that she forgot to present at the hearing, and offered to provide further supporting letters from her doctor and someone at the Canadian Legion. The presentation of new evidence and the promise of new evidence are not grounds of appeal that can be considered under the Act (see *Tracey v. Canada (Attorney General)*, 2015 FC 1300). Leave to appeal cannot be granted on this basis.

[8] The Applicant also argued that the General Division erred in making the decision. The Act sets out the only grounds of appeal that can be considered when deciding whether to grant leave to appeal. Disagreement with the General Division decision is not a ground of appeal under the Act.

[9] I glean from the balance of the application requesting leave to appeal that the Applicant wished to argue that the General Division made erroneous findings of fact upon which the decision was based. In particular, she wrote that she did not testify that May 2011 was not more stressful than usual, but that exam time could be more stressful. She also wrote that the General Division decision incorrectly stated the number of times she wrote in her diary that she needed to take Ativan to control seizures.

[10] In order for an erroneous finding of fact to be a ground of appeal that can be considered under the Act it must have been made in a perverse or capricious manner or without regard to the material before it. Regarding whether exam time was more stressful, I am not satisfied that the General Division erred. It considered her testimony. This finding of fact was not perverse or capricious. It also does not appear to have been a fact on which the General Division based its decision. The General Division decision described the effect of stress on the Applicant, and also stated that she was able to manage stress in her home environment when she was not working. The Applicant was not working at the time relevant to the determination of whether she was disabled under the *Canada Pension Plan*.

[11] Regarding the Applicant's need to take Ativan, I am similarly not persuaded that the General Division made an erroneous finding of fact in a perverse or capricious manner or without regard to the material before it. The General Division had to decide if the Applicant was disabled by August 31, 2012. It considered her need for Ativan prior to this date. It also noted that this need increased after the relevant date although it did not set out a specific number of occasions when this medication was taken. This ground of appeal does not have a reasonable chance of success on appeal.

[12] Last, the Applicant contended that it was the cumulative effect of all of her medical conditions that rendered her disabled. This argument was presented to the General Division and considered by it. The Applicant did not suggest that the General Division did not consider this argument or erred in doing so. Hence, this ground of appeal does not have a reasonable chance of success on appeal.

CONCLUSION

[13] The Application for leave to appeal is refused as the Applicant has not presented a ground of appeal that falls within section 58 of the Act 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.