Citation: ***S. M. v. Minister of Employment and Social Development,*** **2015 SSTAD 1483**

Date: December 31, 2015

File number: AD-15-1329

APPEAL DIVISION

Between:

S. M.

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 he was disabled by a back injury, chronic pain that resulted from this and major depressive disorder when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his 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 November 9, 2015 dismissed his appeal.

[2] The Applicant requested leave to appeal the General Division decision to the Appeal Division of the Tribunal. He argued that the General Division did not observe the principles of natural justice, made errors of law and based its decision on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before it.

[3] The Respondent filed no 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. 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 falls within section 58 of the Act and that may have a reasonable chance of success on appeal.

[6] The Applicant presented numerous arguments as grounds of appeal. First, he submitted that the General Division erred in law as it identified the legal principles set out in

Villani v. Canada(Attorney General), 2001 FCA 248 but did not apply them to the facts before it, and that it did not consider his "functionality". The decision sets out the evidence regarding the Applicant's educational and work history. It is not readily apparent, however, whether these factors or the Applicant's other personal characteristics were considered by the General Division in reaching its decision in this matter. It is settled law that disability claims must be analysed in accordance with these principles. This ground of appeal thus points to an error in law. It may have a reasonable chance of success on appeal.

[7] The Applicant also argued that the General Division erred as it did not consider the interrelationship of his various medical conditions. The law is clear that the Tribunal must consider all of a claimant's conditions, and not just the major disabling one. The General Division considered each of the Applicant's medical conditions and their impact on his capacity to work as a whole. I am not persuaded that it made any error in doing so. This ground of appeal does not have a reasonable chance of success on appeal.

[8] The Applicant also submitted that the General Division's finding that his mental health condition arose outside of the minimum qualifying period was erroneous. He argued that he began psychiatric treatment in August 2008, which was after the minimum qualifying period, but given the delays to be able to see a psychiatrist, especially one who spoke the Applicant's language, the condition must have arisen prior to this date. This argument was made without pointing to any evidence that supported it. However, the General Division decision stated that the Applicant was prescribed anti-depressant medication prior to being referred to the psychiatrist. This may indicate that the Applicant suffered from mental illness prior to the minimum qualifying period. This ground of appeal points to what may have been an erroneous finding of fact made by the General Division without regard to all of the material that was before it. Leave to appeal is granted on this basis.

[9] The Applicant also contended that his back pain condition and mental illness "feeds on itself" with each malady exacerbating the other. He then concluded that this meant that his disability was severe under the *Canada Pension Plan*. I do not dispute that the Applicant's conditions impact one another, and may make each worse. However, this does not lead to the inevitable conclusion that his disability was severe under the legislation. This

argument does not disclose a ground of appeal that may have a reasonable chance of success on appeal.

[10] The Applicant argued that the General Division did not observe the principles of natural justice because it did not consider that he fell within "a classic chronic pain paradigm". The Applicant is correct that chronic pain has been recognized as a medical disorder and that it can be disabling. The General Division decision noted that the Applicant was diagnosed with chronic pain. It summarized the evidence before it regarding treatment for all of his conditions and considered this in reaching its decision. The principles of natural justice are concerned with ensuring that parties to a legal dispute have the opportunity to fully present their case, know and meet the case against them and to have the decision made by an impartial arbiter based on the law and the evidence. This ground of appeal does not point to any error made by the General Division regarding the principles of natural justice. It does not have a reasonable chance of success on appeal.

[11] Further, the Applicant argued that the General Division decision did not comply with the "Guideline" set out on the Department of Employment and Social Development website. What is posted on a government website is not binding on this Tribunal. The General Division made no error in not complying with it. In addition, this Guideline lists factors that are to be considered by the Respondent's staff when adjudicating a claim; it does not set out what the General Division is to consider in reaching its decision. This argument is not a ground of appeal under section 58 of the Act.

[12] The Applicant also summarized his symptoms and their chronic and intertwined nature. This evidence was before the General Division and considered by it. Its repetition is not a ground of appeal.

[13] Finally, the Applicant argued that the General Division misinterpreted the medical information and failed to address the most significant issues regarding the disability application. He did not indicate how this was done, except in the arguments presented above. The Tribunal is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence and each argument advanced by each party need not be mentioned in the written decision – *Simpson v. Canada (Attorney General)*,

2012 FCA 82. In addition, the mere allegation that evidence was misinterpreted or issues not addressed is not a ground of appeal. Leave to appeal is not granted on the basis of this argument.

CONCLUSION

[14] The Application is granted because the Applicant 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.

[15] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

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.