



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. F. P. v. Minister of Employment and Social Development*, 2016 SSTADIS 10

Date: January 6, 2016

File number: AD-15-1256

APPEAL DIVISION

Between:

C. F. P.

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 suffered from a neck injury that caused ongoing pain, other physical ailments and mental illness. 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 hearing by written questions and answers and on November 12, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal the General Division decision to the Appeal Division of the Tribunal. She argued that the General Division did not observe the principles of natural justice. She also summarized her medical symptoms and provided a recent letter from her family physician and a copy of a diagnostic imaging report to support her application.

[3] The Respondent filed no materials 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 (this is set out in the Appendix to this decision). I must therefore 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] First, the Applicant presented a letter from her family physician and a report from a MRI that was conducted. The presentation of new evidence is not a ground of appeal under the Act. Leave to appeal cannot be granted on the basis of the presentation of this information.

[7] The Applicant also wrote in the application requesting leave to appeal that the General Division erred when it stated that she had obtained a grade 12 education as she only completed grade 10. This was an error. However, in order for an error of fact to be a ground of appeal under section 58 of the Act it must have been made in a perverse or capricious manner or without regard to the material before it, and the decision had to be based on this erroneous finding of fact. I am not satisfied that the General Division based its decision on this fact, so this is not a ground of appeal that can be considered under the Act.

[8] The Applicant also wrote that the General Division failed to observe a principle of natural justice or erred in its exercise of jurisdiction. She did not explain how this was to have happened. Without some explanation of this, I am not satisfied that the Applicant identified a ground of appeal under the Act that may have a reasonable chance of success on appeal.

[9] However, the law is settled that when deciding if a claimant is disabled under the *Canada Pension Plan* both their personal characteristics, (including age, education, language skills, work and life experiences) and their medical conditions must be considered. It is not sufficient to simply recite this information in the decision. In *Garrett v. Canada (Minister of Human Resources Development)*, 2005 FCA 84 the Federal Court of Appeal stated clearly that it is an error of law to not consider these factors. In this case the General Division may not have considered both the Applicant's personal and medical conditions, which may be an error of law. This ground of appeal may have a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is allowed for the reasons set out above.

[11] 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.