



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. K. v. Minister of Employment and Social Development*, 2016 SSTADIS 25

Date: January 15, 2016

File number: AD-15-1197

APPEAL DIVISION

Between:

A. K.

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 requested leave to appeal from the General Division decision which refused to extend the time for him to appeal the Respondent's decision to replace his *Canada Pension Plan* disability pension with a *Canada Pension Plan* retirement pension when he turned 65 years of age. The Appellant did not provide all the necessary information to complete the application for leave to appeal when he first filed documents with the Tribunal for this purpose. The Tribunal wrote to the Appellant and explained what was required to complete the application, specifically setting out what grounds of appeal the Appeal Division of the Tribunal could consider and asked him to address them.

[2] The Appellant argued that the reduction in pension payable made it more difficult for him to pay his bills and he enclosed medical reports, letters to Service Canada and a Canada disability tax credit form to support his appeal. He further submitted that the General Division had not observed the principles of natural justice or erred regarding its jurisdiction, and that it made erroneous findings of fact in a perverse or capricious manner or without regard to the material before it.

[3] The Respondent filed no submissions.

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. 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). 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] First, the presentation of new evidence is not a ground of appeal that can be considered under section 58 of the Act (*Tracey v. Canada (Attorney General)*, 2015 FC 1300). Therefore, the presentation of letters, medical records and a disability tax certificate is not a ground of appeal, and leave to appeal is not granted on this basis.

[7] The Applicant wrote in the application for leave to appeal that the General Division failed to observe the principles of natural justice or erred with respect to its jurisdiction. The principles of natural justice are concerned with ensuring that parties to a legal dispute have the opportunity to present their case, know and respond to the case against them, and to have the decision made by an impartial arbiter based on the facts and the law. The jurisdiction of the Tribunal is that conferred to it by the legislation. The Applicant did not explain how any of these principles were not observed in this case. I am not satisfied that the General Division erred in this regard. This ground of appeal does not have a reasonable chance of success on appeal.

[8] The Applicant also wrote that the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it. Again, he did not specify what this error was or how it was made in a perverse or capricious way or without regard to the material before it. I am not satisfied that this statement is a ground of appeal that may have a reasonable chance of success on appeal.

[9] I have reviewed the General Division decision. It correctly set out the relevant law and applied it to the facts before it. The decision is transparent, logical and intelligible. It is defensible on the law and the facts.

[10] Although I am sorry that the Applicant is suffering from a permanent disability and financial hardship, the Tribunal is not able to grant him any relief on this basis. The application for leave to appeal is refused.

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.