



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

**Citation: *P. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 33**

**Date: January 19, 2016**

**File number: AD-15-1108**

**APPEAL DIVISION**

**Between:**

**P. S.**

**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 neck and shoulder pain when she filed the application for a *Canada Pension Plan* disability pension that is at issue in this proceeding. The Respondent denied this 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 September 23, 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 her disability was severe and prolonged, and that she attempted to find alternate work but there was none available in the area where she lived. She also disagreed with how the General Division weighed the evidence before it.

[3] The Tribunal requested that both parties file submissions that addressed the only grounds of appeal that can be considered by the Appeal Division of the Tribunal. The Applicant filed further submissions which repeated the grounds of appeal that she had already presented.

[4] The Respondent filed no submissions regarding this request for leave to appeal.

### ANALYSIS

[5] 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.

[6] 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 under section 58 of the Act and that may have a reasonable chance of success on appeal.

[7] First, the Applicant argued that the General Division put more weight on the evidence of the Registered Nurse than the Neurologist who treated the Applicant, and that the Neurologist should have been found to be more credible. With this argument, she asks this tribunal to reevaluate and reweigh the evidence that was put before the General Division. This is the province of the trier of fact, the General Division in this case. The Tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the Tribunal who made the findings of fact – *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, I find that this argument does not raise grounds of appeal that may have a reasonable chance of success.

[8] The Applicant also contended that she tried to find alternate work but that there was none available in the area where she lives that would be suitable to her physical limitations. She referred to a list of job possibilities that she had provided to the General Division. Again, it is for the General Division to receive the evidence from the parties, weigh that evidence, and reach a decision. The Federal Court of Appeal, in *Canada (Minister of Human Resources Development) v. Rice*, 2002 FCA 47, stated that socio-economic factors such as labour market conditions are an irrelevant consideration in deciding if a claimant is disabled. The focus should be on the claimant's capacity to pursue a substantially gainful occupation having regard to their personal circumstances and not on whether real jobs are available in the labour market. Therefore, the General Division did not err when it did not consider the lack of availability of work for the Applicant. This ground of appeal also does not have a reasonable chance of success on appeal.

## **CONCLUSION**

[9] The Application is refused as the Applicant did not present a ground of appeal that falls under section 58 of the Act and 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.