



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. F. v. Minister of Employment and Social Development*, 2016 SSTADIS 46

Tribunal File Number: AD-15-1265

BETWEEN:

R. F.

Appellant

and

**Minister of Employment and Social Development
(formerly known as Minister of Human Resources and Skills Development)**

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

HEARD ON:

DATE OF DECISION: January 22, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant claimed that he was disabled by physical injuries at work and depression. 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 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 teleconference hearing and on November 5, 2015 dismissed the 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 failed to observe the principles of natural justice and that this representative also did not file all the relevant medical evidence to support his claim with the Tribunal.

[3] The Respondent filed no submissions regarding the application 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. 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 under section 58 of the Act and that may have a reasonable chance of success on appeal.

[6] The Applicant argued that leave to appeal should be granted because the General Division failed to observe the principles of natural justice. He contended that at the start of the hearing the General Division Member dismissed his representative because he was not a Paralegal licensed by the Law Society of Upper Canada. The General Division continued to hold the hearing at that time, without giving the Applicant the opportunity to request an adjournment or to retain a licensed representative. He wrote that his first language was French and he relied on his representative to file materials to support his case, and to represent him at the hearing. When his representative was dismissed he was not prepared for the hearing and was unable to fully present his case or to answer the case against him.

[7] The principles of natural justice are concerned with ensuring that parties to litigation have the opportunity to fully present their case, know and meet the case against them and to have the decision made by an impartial decision maker based on the facts and the law. I am satisfied that in the circumstances of this matter, the Applicant may not have been able to fully present his case to the General Division. This ground of appeal may have a reasonable chance of success on appeal.

[8] The Applicant also argued that his representative at the General Division hearing did not file all the relevant evidence that supported his case. While this is unfortunate, this argument does not point to any error made by the General Division. It is for the parties to ensure that all relevant evidence is presented to the Tribunal. This ground of appeal does not have a reasonable chance of success on appeal.

CONCLUSION

[9] The Application is granted for the reasons set out above.

[10] 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.