



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. A. v. Minister of Employment and Social Development*, 2016 SSTADIS 48

Tribunal File Number: AD-15-1335

BETWEEN:

A. A.

Appellant

and

**Minister of Employment and Social Development
(formerly known as the 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 headaches, dizziness, cognitive impairment, a foot disorder, and other physical and mental illnesses 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 Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a videoconference hearing and on November 23, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal the General Division decision to the Appeal Division of the Tribunal. He wrote in the application that the General Division did not observe natural justice and he disagreed with a number of factual conclusions made in the decision.

[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 (the section is set out in the Appendix to this decision). Accordingly I must decide if the Applicant has presented a ground of appeal that is within section 58 of the Act and that may have a reasonable chance of success on appeal.

[6] The Applicant wrote in the application for leave to appeal that the General Division “failed to observe the principle exercise” in his case. He did not explain how this was to have occurred or how it was contrary to section 58 of the Act. I am therefore unable to conclude that this statement discloses a ground of appeal that may have a reasonable chance of success on appeal.

[7] The Applicant also contended that the General Division erred in law in making the decision. The General Division decision concluded that there was no objective evidence regarding the Applicant’s headaches, dizziness, cognitive impairment or lack of sleep. The Applicant contended that there was objective evidence regarding these conditions and that it was contained in the Questionnaire that he completed when he applied for the disability pension. I am not satisfied that this argument points to any error made in the General Division decision. The decision contained a detailed summary of the evidence before it, including the documents and testimony. It considered this evidence and concluded that as there was no medical report that referred to these conditions, there was no objective evidence regarding them.

[8] The Applicant also referred to a number of medical reports that stated that he was unable to work, that he had radiating pain, etc. Again, this evidence was before the General Division and considered by it to reach its decision. The Federal Court of Appeal has decided that the Tribunal is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence need not be mentioned in the written decision (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). The Applicant did not rebut this presumption. Hence I am not satisfied that this is a ground of appeal under the Act that may have a reasonable chance of success on appeal.

[9] Finally, the Applicant submitted that he obtained a Grade 12 education in Syria which would not be recognized as the same in Canada. The General Division decision considered that the Applicant obtained a Grade 12 education in Syria and his work experience in both countries. I am not persuaded that the presentation of this argument is a ground of appeal under the Act.

CONCLUSION

[10] The Application is refused because the Applicant did not present a ground of appeal that falls within 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.