



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. J. v. Minister of Employment and Social Development*, 2016 SSTADIS 58

Tribunal File Number: AD-15-1297

BETWEEN:

J. J.

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

DATE OF DECISION: January 26, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant claimed that she was disabled by rheumatoid arthritis and alcoholism. 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 teleconference hearing and on October 26, 2015 dismissed the appeal.

[2] On December 2, 2015 the Applicant filed an application for leave to appeal the General Division decision to the Appeal Division of the Tribunal. On December 22, 2015 the Tribunal requested that the parties file submissions on how the request for leave to appeal fell within section 58 of the *Department of Employment and Social Development Act* and any other legal issues. The Applicant submitted that the General Division erred in how it weighed the evidence before it, and that it erred when it based its decision, in part, on a lack of medical evidence directly related to her alcoholism, especially when she had asked to introduce some evidence on this at the hearing.

[3] The Respondent submitted that it took no position on whether leave to appeal was granted in this matter.

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 (reproduced 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] The Applicant contended that the General Division erred in the amount of weight that it gave to the testimony of the Applicant's spouse regarding her alcohol abuse. Assigning weight to evidence, whether oral or written, is the job of the trier of fact, which is the General Division in this case. A Member hearing an application for leave to appeal may not substitute their view of the evidence for that of the trier of fact (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). Accordingly, the Applicant's disagreement with how the General Division weighed the evidence before it is not 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 referring to evidence that it did not admit at the hearing in paragraph eight of the decision. The decision set out that at the hearing the Applicant, through her representative, asked for further medical evidence to be admitted. However, after learning that the admission of this evidence would result in an adjournment of the hearing decided not to have it admitted. The General Division made no error by setting this out in the decision.

[8] The Applicant also argued that the General Division also erred as it based its decision, at least in part, on its erroneous finding of fact that there was no medical evidence to support her claim that alcoholism was a disabling condition. I note, however, that the decision does refer to one medical report that recommended alcohol treatment for the Applicant. In addition, the Applicant wrote in the application for leave to appeal that the document she initially requested to be admitted related to her alcoholism.

[9] I am satisfied that this ground of appeal may have a reasonable chance of success on appeal. The General Division may have made an erroneous finding of fact without regard to all of the material before it when it found that there was no medical evidence of addiction in the face of a treatment recommendation for this. It appears that both the Applicant and her spouse also testified about the Appellant's addiction and treatment for it.

[10] The Applicant also argued that alcoholism, by itself, has been recognized as a disabling condition under Ontario human rights legislation, and that the General Division should have considered that this condition was a disability. It is not contested that substance abuse can be a disabling condition. The General Division accepted that in this case, the Applicant's alcohol abuse may impact her ability to work. It relied, however, on a lack of medical evidence to support the conclusion that this was not disabling. The decision did not explain why it dismissed the testimony regarding this condition that was before it. I am satisfied that this may have been based on an erroneous finding of fact made without consideration of all of the material that was before the General Division. This ground of appeal may have a reasonable chance of success on appeal.

CONCLUSION

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

[12] 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