



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. K. v. Minister of Employment and Social Development*, 2016 SSTADIS 59

Tribunal File Number: AD-15-1334

BETWEEN:

**D. K.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: January 26, 2016

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant applied for a *Canada Pension Plan* disability pension and claimed that she was disabled by injuries sustained in a car accident. The Respondent denied her claim initially and upon 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 November 9, 2015 dismissed the appeal.

[2] The Applicant filed an application requesting leave to appeal the General Division decision to the Appeal Division of the Tribunal on December 14, 2015. Prior to deciding whether to grant leave to appeal, the Appeal Division of the Tribunal requested that both parties file written submissions to explain if the grounds of appeal presented fell within the legislation. The Applicant filed submissions on January 13, 2016 and argued that the General Division decision failed to observe the principles of natural justice and based its decision on erroneous findings of fact made without regard to all of the material before it. On January 22, 2016 the Respondent consented to leave to appeal being granted in this matter.

### ANALYSIS

[3] 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.

[4] 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 (see the Appendix to this decision). Accordingly, I must 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.

[5] First, the Applicant argued that the General Division failed to observe the principles of natural justice or erred with respect to its jurisdiction as some of the materials filed by the Applicant were not before the General Division when it made its decision. The principles of natural justice are concerned with ensuring that parties to a disability claim have a full opportunity to present their case, know and answer the case against them, and have the decision made by an impartial decision-maker based on the law and the facts. The General Division decision summarized the medical evidence that was before it at the hearing, although it did not specifically refer to each piece of evidence. It made no error in doing so. The decision also noted that medical information seemed to be lacking, and that this lack of information was troubling. If there was further medical evidence that was filed with the Tribunal but not placed before the General Division Member, the principles of natural justice may have been breached. This is a ground of appeal that may have a reasonable chance of success on appeal.

[6] The Applicant also argued that the General Division decision contained an important factual error as it did not consider the notes and records from the Applicant's family physician which were before it. The decision stated that these were illegible; however the Applicant disagreed with this. I am satisfied that the General Division may have based its decision on erroneous findings of fact made without regard to all of the material before it if it did not read and consider the family physician's progress notes and did not grant the Applicant an opportunity to provide legible copies of same. This ground of appeal may also have a reasonable chance of success on appeal.

## **CONCLUSION**

[7] The Application is granted for the reasons set out above. The Applicant is requested to contact the Tribunal to ensure that all of the materials she filed with the Tribunal have been received.

[8] 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.