



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. Z. v. Minister of Employment and Social Development*, 2016 SSTADIS 97

Tribunal File Number: AD-16-165

BETWEEN:

N. Z.

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: Janet Lew

DATE OF DECISION: February 29, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated December 9, 2015. After conducting an in-person hearing on December 1, 2015, the General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not “severe” at her minimum qualifying period of December 31, 2009. The Applicant filed an application requesting leave to appeal on January 15, 2016 and additional submissions on February 3, 2016, in response to a request for additional information and clarification from the Social Security Tribunal. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[2] Does the appeal have a reasonable chance of success?

SUBMISSIONS

[3] In the leave application filed on January 15, 2016, the Applicant explained that she is seeking leave to appeal because of her health issues: she tires quickly, can experience sudden dizziness, is unable to function around others, has swelling in her left leg from standing for prolonged periods and of primary concern, has back pain. She also advised that she does not have any support from her family and requires some financial assistance.

[4] The Social Security Tribunal wrote to the Applicant on January 20, 2016, and advised that additional information was required as follows:

- **Reasons for your appeal:**
Explain in detail **why** you are appealing the decision of the General Division. Only the following 3 reasons can be considered under the law:

Reason #1: *The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.* For example, an appellant submitted a medical report and the document was not included in the appeal file.

Reason #2: *The General Division made an error in law in its decision.* For example: the Member of the General Division based its decision on the wrong section of the applicable law.

Reason #3: *The General Division made an important error regarding the facts contained in the appeal file.* For example, the Member of the General Division indicated in the decision that there was no medical report submitted by the appellant when one had been submitted and was in the appeal file.

Please identify which of the reason(s) apply to your case and provide as much detail as possible. It is not sufficient to simply indicate that there was an error or that natural justice was not respected. You must explain what the error was or how natural justice was not respected. You can refer to specific pages of documents on file or to paragraphs in the General Division decision.

- **Why the Appeal Division should give you permission to file an appeal:** As mentioned above you must first request the permission of the Appeal Division to file an appeal. In addition to identifying the reasons for your appeal, you must also explain why your application to the Appeal Division has a reasonable chance of success.
- Any statements of fact that were presented to the General Division and that you are relying on in this Application

[5] On February 3, 2016, the Applicant responded that she requires financial assistance and that she continues to experience health concerns. She wrote that she has grade 1, stage 3 cancer, which is a very aggressive sickness if it spreads. She advises that her family physician is unable to tell her that she is cancer free. After her chemotherapy and radiation treatments, her head pains have been getting worse each day. She also is beginning to suffer from memory loss, which is making her worry about her future. Since surgery, the right side of her body has been numb. Her right hand has also been going numb, which affects her ability to hold things. She also has a long history of blood clots in her left leg, which renders her unable to stand for prolonged periods of time. Her left leg swells and is painful. She also advised that doctors have advised her that the problem with

water in her head cannot be corrected with surgery. She has also found that the chemotherapy and radiation treatments have affected her health and head further, leaving her greatly exhausted.

[6] The Applicant submits that the General Division indicated that no medical reports were submitted. The Applicant offers that if any additional information about her medical history is required, her family physician requires a written request.

[7] The Respondent has not filed any written submissions in respect of this leave application.

ANALYSIS

[8] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (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.

[9] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted. The Federal Court of Canada recently approved this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[10] The Applicant has not specified how the reasons fall into any of the grounds of appeal. The Applicant has not identified any errors of law which the General Division might have made, nor does she allege that the General Division based its decision on an

erroneous finding of fact. There are no submissions either that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[11] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some particulars of the error or failing committed by the General Division which fall into the enumerated grounds of appeal under subsection 58(1) of the DESDA, otherwise the application requesting leave to appeal is deficient.

[12] The Applicant's submissions call for a reassessment and re-weighing of the evidence, which is beyond the scope of a leave application. The role of the Appeal Division is to determine if the General Division committed a reviewable error under subsection 58(1) of the DESDA, and if so, to provide a remedy for that error. In effect, the Applicant is requesting that we reassess and re-weigh the evidence and come to a different conclusion from the General Division. Subsection 58(1) of the DESDA sets out very limited grounds of appeal and does not allow for a reassessment. The Appeal Division has no jurisdiction to intervene in the decision of the General Division otherwise or to hear the appeal on a *de novo* basis.

[13] I am unable to consider the Applicant's financial circumstances as they are of no relevance to a leave application. They do not address any of the enumerated grounds of appeal under subsection 58(1) of the DESDA and do not point to any errors or failings on the part of the General Division.

[14] I am not satisfied that the appeal has a reasonable chance of success on this ground.

MEDICAL RECORDS

[15] The Applicant indicates that her family physician can provide additional information.

[16] If the Applicant is suggesting that I should consider any proposed additional records or opinion as part of the leave application, there are limitations under subsection 58(1) of the DESDA. The subsection makes it clear that the grounds of appeal are limited. Thus, in a leave application, any new facts should relate to the grounds of appeal. Neither the leave application nor the appeal provides any opportunities to re- assess or re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*.

[17] In *Tracey*, the Federal Court determined that there is no obligation to consider any new evidence. Indeed, Roussel J. wrote:

Under the current legislative framework however, the introduction of new evidence is no longer an independent ground of appeal (*Belo-Alves [v. Canada (Attorney General)*, 2014 FC 1100], at para 108).

[18] If the Applicant proposes to provide additional medical information of her family physician in an effort to rescind or amend the decision of the General Division, she must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and must also file an application for rescission or amendment with the same Division that made the decision. There are strict deadlines and requirements under section 66 of the DESDA for rescinding or amending decisions.

Subsection 66(2) of the DESDA requires an application to rescind or amend a decision to have been made within one year after the day on which a decision is communicated to a party, while paragraph 66(1)(b) of the DESDA requires an applicant to demonstrate that the new facts are material and could not have been discovered at the time of the hearing with the exercise of reasonable diligence. Under subsection 66(4) of the DESDA, the Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so, which in this case is the General Division.

CONCLUSION

[19] As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, I am not satisfied that the appeal has a reasonable chance of success and the application for leave to appeal is therefore dismissed.

Janet Lew

Member, Appeal Division