Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *R. C. v. Minister of Employment and Social Development,* 2016 SSTADIS 118

Date: March 21, 2016

File number: AD-15-1104

APPEAL DIVISION

Between:

R. C.

Applicant

and

Minister of Employment and Social Development

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on September 22, 2015

Canada

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is refused.

INTRODUCTION

[2] On July 17, 2015, the General Division of the Social Security Tribunal of Canada, (the Tribunal), denied the Applicant's appeal of a reconsideration decision which upheld the Respondent's initial decision that found he did not meet the criteria for a severe and prolonged disability set out in the *Canada Pension Plan* (CPP). The Applicant seeks leave to appeal the General Division decision, (the Application).

GROUNDS OF THE APPLICATION

[3] The Applicant has not identified the specific ground (s) of appeal in relation to which he brings his Application. In his original Application, the Applicant took issue with the finding in the General Division decision that the evidence does not support a finding that he had a severe disability that rendered him incapable regularly of pursuing substantially gainful employment at his MQP (minimum qualifying period).

[4] In reply to a follow-up letter from the Tribunal dated January 19, 2016, counsel for the Applicant indicated that the Applicant was appealing the General Division decision because when making the decision, the General Division failed to consider all of the medical reports on file. Counsel submitted that the medical evidence on file showed the Applicant's ongoing difficulties since his car accident.

[5] The Appeal Division finds that Counsel's statements raise questions of error of law or error of fact or of mixed law and fact.

ISSUE

[6] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[7] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.[1] To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success[2]. In *Canada (Minister of Human Resources Development) v. Hogervorst,* 2007 FCA 41 as well as in *Fancy v. Canada (Attorney General),* 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case. In *Canada (Attorney General) v. Carroll*[3] the Federal Court opined that, "an Applicant will raise an arguable case if she [or he] ... raises an issue not considered ... or can point to an error" in the decision

[8] Section 58 of the DESD Act set out the only grounds on which an appellant may bring an appeal. The Applicant relies on all three grounds. In order to grant leave to appeal the Tribunal must be satisfied that the appeal would have a reasonable chance of success. This means that the Tribunal must first find that, were the matter to proceed to a hearing,

(a) at least one of the grounds of the Application relate to a ground of appeal; and

(b) there is a reasonable chance that the appeal would succeed on this ground.

For the reasons set out below the Tribunal is not satisfied that this appeal would have a reasonable chance of success.

ANALYSIS

The Alleged Errors

[9] Counsel for the Applicant stated that she disagreed with the General Division's conclusion that while the Applicant does have some physical limitations, the evidence does not support a finding of severe and prolonged disability. Counsel for the Applicant

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[1] Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal."

[2] The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

[3] *Canada (Attorney General) v. Carroll,* 2011FC1092 para 14.

submitted that the Applicant has a chronic pain condition that limits his activities of daily life. Counsel also
submitted that the General Division erred as while it mentioned that the Applicant had become "deconditioned" the General Division failed to consider the reason why "deconditioning" had occurred.

[10] The Appeal Division is not satisfied that viewed either as errors of law or errors of fact, or even errors of mixed law and fact that the Applicant's submissions reveal a ground of appeal that would have a reasonable chance of success. In the view of the Appeal Division the submissions do no more than restate the Applicant's position. The General Division arrived at
its conclusion concerning the lack of supportive medical evidence having examined the available medical evidence in the context of its creation relative to the MQP.

[11] The medical reports to which Counsel for the Applicant alludes were all before the General Division, whose job it is to weigh the evidence. Furthermore, it is well settled law that the General Division does not have to refer to every piece of evidence that was before it. Outside of the bare charge that the General Division did not consider all of the medical reports, Counsel for the Applicant has not identified any report or reports that were not considered. Nor has Counsel for the Applicant pointed to any issue that the General Division did not consider.

[12] The decision indicates that the General Division also examined and assessed the medical evidence respecting the Applicant's mental health condition as well as the presence or absence of any diagnosis or treatment plan on or before the MQP. The General Division found that the medical evidence post-dates the MQP by several years. (para 63) In the context of these findings the Appeal Division is unable to find any error on the part of the General Division Accordingly; the Appeal Division is not satisfied that the appeal would have a reasonable chance of success. e.

CONCLUSION

[13] The Application is refused.

Hazelyn Ross
Member, Appeal Division