



[TRANSLATION]

Citation: *R. B. v. Canada Employment Insurance Commission*, 2016 SSTADEI 189

Date: April 7, 2016

File number: AD-15-1343

Appeal Division

Between:

R. B.

Applicant

and

**Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)**

Respondent

Decision by: Hazelyn Ross. Member, Appeal Division

DECISION

[1] The Appeal Division of the Social Security Tribunal, (the Tribunal), grants leave to appeal.

BACKGROUND

[2] In a decision dated October 7, 2015, the General Division of the Tribunal denied the Applicant's appeal from a reconsideration decision that found her ineligible for a Canada Pension Plan, (CPP), disability pension. The Applicant seeks leave to appeal the General Division decision, (the Application).

GROUNDS OF THE APPLICATION

[3] The Applicant alleged that the General Division breached the provisions of subsection 58(1) of the *Department of Employment and Social Development Act*, (the DESD Act).

THE LAW

What must the Applicant establish on an Application for Leave to Appeal?

[4] Subsection 58(2) of the DESD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success". On an Application for Leave to Appeal the hurdle that an Applicant must meet is a first and lower one than that which must be met on the hearing of the appeal on the merits. To grant leave the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. A reasonable chance of success has been equated with an arguable case¹; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

¹ *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[5] Subsection 58(1) of the DESD Act states that the only grounds of appeal are 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.

In order to grant the Application, the Tribunal must determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal set out above.

ISSUE

[6] The Appeal Division must decide whether the Appeal has a reasonable chance of success.

ANALYSIS

[7] Counsel for the Applicant submitted that the General Division committed a number of errors of law and fact in respect of its findings concerning the medical documentation. Counsel for the Applicant also alleged that the General Division did not give adequate weight to the Applicant's oral testimony and the medical and other documentation. Having regard to the Tribunal record and noting that weighing evidence is the domain of the General Division the Appeal Division is not persuaded that these submissions relate a ground of appeal. Accordingly, leave will not be granted in this regard.

[8] However, Counsel for the Applicant also submitted that the General Division erred in its assessment of the Applicant's real world circumstances, which she described as "inaccurate and dismissive".

[9] Having regard to the decision, the Appeal Division finds that the General Division correctly described the Applicant's age, level of education and level of language proficiency. After setting out these factors, the General Division went on to state that it found that the Applicant's age, level of education, language proficiency and past work and

life experiences were not barriers to her future employment prospects. However, it is not clear to the Appeal Division how the General Division arrived at its conclusion.

[10] In *Newfoundland and Labrador Nurses' Union v. Newfoundland and Labrador (Treasury*

Board, 2011 SCC 62, Abella, J. writing for the Court stated:-

[9] "... reasons must be sufficient to permit the parties to understand why the tribunal made the decision and to enable judicial review of that decision. The reasons should be read as a whole and in context, and must be such as to satisfy the reviewing court that the tribunal grappled with the substantive live issues necessary to dispose of the matter."

[11] It is not clear to the Appeal Division that the General Division "grappled" with the issues necessary to arrive at its conclusions relative to the Applicant's real world circumstances. Thus the Applicant may have raised an arguable case in this regard. Leave to appeal is granted in relation to this ground of appeal.

CONCLUSION

[12] The Application for Leave to Appeal is granted solely with respect to the General Division's assessment of the Applicant's real world circumstances.

[13] The decision granting leave does not presume the result of the appeal on the merits of the case.

Hazelyn Ross
Member, Appeal Division