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

Citation: ***C. D. v. Minister of Employment and Social Development*****, 2016 SSTADIS 142**

Date: April 20, 2016

File number: AD-16-452

APPEAL DIVISION

Between:

C. D.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), is granted.

INTRODUCTION

[2] In a decision issued January 12, 2016 the General Division of the Social Security Tribunal of Canada, (the Tribunal), found that the Applicant did not meet the criteria for payment of a *Canada Pension Plan* (CPP) disability pension. The Applicant seeks leave to appeal the decision, (the Application).

GROUNDS OF THE APPLICATION

[3] Counsel submitted that the General Division breached subsection 58(1) of the *Department of Employment and Social Development* (DESD) *Act*, in that the General Division committed a number of errors of law by failing to consider the whole of the Applicant's evidence. Counsel for the Applicant also submitted that the General Division made its decision on erroneous without regard for the material before it.

ISSUE

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

THE LAW

[5] 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*

[1] Sections 56 to 59 of the DESD Act. 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."

General), 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case.

[6] There are only three grounds on which an appellant may bring an appeal. These grounds are set out in section 58 of the DESD Act. They are,

> (1) a breach of natural justice;
>
> (2) the General Division erred in law; and
>
> (3) the General Division based its decision on an error of fact made in a perverse or capricious manner or without regard for the material before it. [3]

[7] 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

[8] Counsel for the Applicant raised several issues that she alleges give rise to errors of law and, therefore, grounds of appeal that would have a reasonable chance of success. Counsel for the Applicant submitted that the General Division failed to consider the totality of the Applicant's evidence, omitting a number of medical reports.

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[3] **58(1) Grounds of Appeal** –

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] On considering the submissions of Counsel for the Applicant, the General Division decision, and the Tribunal Record, the Appeal Division finds that Counsel's submissions go primarily to the manner in which the General Division weighed the medical evidence and in some instances the submissions do not give the entire picture of what the documents actually contain.

[10] It is settled law that a Tribunal need not refer to every piece of evidence. *Oliviera v. Canada (Minister of Human Resources Development),* 2003 FCA 213, see also *Dossa v. Canada (Pension Appeals Board),* 2005 FCA 387. All of the documents that Counsel for the Applicant submitted were disregarded by the General Division were actually before it and the General Division Member did refer to them. (paras. 33-47). Without more, the General Division is to be presumed to have considered all of the evidence that was before it. It is not the role of the Appeal Division to reweigh that evidence. *Tracey v. Canada (Attorney General), 2015* FC 1300. Accordingly, leave to appeal will not be granted in regard to the alleged omissions.

[11] Counsel for the Applicant also submitted that the General Division reached conclusions about the Applicant's ability to work that were wrong in law, in that, there was evidence that amply supported an opposite conclusion. Counsel for the Applicant relied on reports found at GD3-8, GD3-9 and GD4-14. She noted that the reports stated the following:-

> "GD3-8 - report dated May 28/14, by Crisis Nurse at Canadian Mental Health Association disclosed that symptoms cause significant impairment in daily functioning.
> GD3-9 - report dated July 7 /14 by Dr. Lefcoe said she engages in impulsive activities, spending money that she does not have.
> GD4-14 - report dated August 12, 2013, the psychiatrist said treatment was difficult and ongoing. He stated in this report that Bi-polar, PTSD, anxiety, depression and panic attacks prevent work."

[12] Without commenting on the merits of the decision, the Appeal Division notes that the General Division decided the matter mainly on the Applicant's failure to follow medical

advice, including the advice to Dr. Lefcoe. Dr. Garfat, the Applicant's then family physician,authored the medical report at GD4-14. The General Division cited this report at para. 40 but did not refer to it in its analysis. While respecting the principle that the General Division did not have to cite every piece of evidence on which it made its decision, given its conclusion that the Applicant had capacity to work, the Appeal Division finds that the failure to address a report or reports that stated the contrary points to an error that may have a reasonable chance of success on appeal.

CONCLUSION

[13] For the reasons set out above, the Appeal .Division finds that Counsel for the Applicant has presented an arguable case on appeal. Accordingly, the Application is granted.

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

Hazelyn Ross
Member, Appeal Division