



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 191

Tribunal File Number: AD-16-191

BETWEEN:

C. C.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal

DECISION BY: Neil Nawaz

DATE OF DECISION: May 31, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division (GD) dated October 16, 2015. The GD conducted an in-person hearing on the same date and determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan* (CPP), as it found that his disability was not “severe” prior to the minimum qualifying period (MQP) of December 31, 1998.

[2] In a brief handwritten letter received by the Appeal Division (AD) on January 19, 2016, the Applicant requested an appeal of the GD decision. On February 4, 2016, the AD sent a letter to the Applicant requesting detailed reasons for his application for leave to appeal. The Applicant replied by way of a letter dated March 1, 2016, which enclosed a new medical report.

[3] To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESDA), an appeal to the AD may only be brought if leave to appeal is granted and the AD must either grant or refuse leave to appeal.

[5] Subsection 58(2) of the DESDA provides that leave to appeal is refused if the AD is satisfied that the appeal has no reasonable chance of success.

[6] According to subsection 58(1) of the DESDA the only grounds of appeal are the following:

- (a) The GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The GD erred in law in making its decision, whether or not the error appears on the face of the record; or

- (c) The GD 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.

[7] A leave to appeal proceeding is a preliminary step to a hearing on the merits. It is a first hurdle for the Applicant to meet, but it is lower than the one that must be met on the hearing of the appeal on the merits. At the leave stage, the Applicant does not have to prove the case.

ISSUE

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

SUBMISSIONS

[9] The Applicant is not represented by counsel, and he prepared his own submissions. From what I can determine, the Applicant seeks leave on the following grounds:

- He suffers from psychiatric problems and poor memory;
- The GD made an error in law by disregarding medical evidence, specifically the reports of Dr. Edwards and Dr. Leech-Porter, which clearly stated he was severely disabled and fit all the requirements to qualify for CPP disability benefits.

[10] The Applicant also submitted a medical report dated January 29, 2016 from a general practitioner and addictions specialist named Caroline Ferris.

ANALYSIS

[11] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada*.¹ The Federal Court of Appeal has determined that an

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

arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada*.²

[12] In his submissions, the Applicant seems to be suggesting that the GD erred in law by not reasonably considering the reports of Dr. Geoffrey Edwards, a general practitioner, and Dr. Colin Leech-Porter, a psychiatrist. To my mind, this ground more properly qualifies as an alleged failure to observe a principle of natural justice; whatever the case, I note that the GD's reasons for its decision contains summaries of the following documents:

- Selected chart notes from Dr. Edwards from 1996 to 2002;
- Reports by Dr. Edwards dated January 5, 2014 and July 3, 2015;
- CPP medical questionnaire completed by Dr. Leech-Porter on March 15, 2013;
- Reports by Dr. Leech-Porter dated July 5, 2013 and November 22, 2013.

[13] The GD appears to have fully discussed and analyzed these items of medical evidence in determining that the Applicant's claimed impairments did not meet the CPP's "severe" standard as of December 31, 1998. The Applicant is essentially requesting that I re-weigh the evidence that was available at the hearing and come to a different conclusion than that made by the GD. This is beyond the scope of a leave application. The DESDA does not contemplate a reassessment of the evidence at the leave stage. It does, however, require an applicant to satisfy the AD that there is at least one reviewable error that has a reasonable chance of success, and the Applicant has not done so in this regard.

[14] In submitting Dr. Ferris's report, the Applicant appears to be asking the AD to take it into consideration and overturn the GD's decision in his favour. This I cannot do, given the constraints of subsection 58(1) DESDA. The AD has no authority to make a decision based on the merits of the case. Once a hearing has concluded, there is a very limited basis upon which any new or additional information can be raised. An applicant could consider making an application to rescind or amend a decision of the GD. However, an applicant would need to comply with the requirements set out in section 66 of the DESDA and sections 45 and 46 of

²*Fancy v. Canada (Attorney General)*, 2010 FCA 63

the *Social Security Tribunal Regulations*. Not only are there strict deadlines and requirements that must be met to succeed in an application to rescind or amend, but an applicant would also need to demonstrate that any new facts are material and that they could not have been discovered at the time of the hearing with the exercise of reasonable diligence. Such an application would also need to be made with the same division that rendered the decision in question.

[15] While the GD's analysis of the evidence did not arrive at the conclusion the Applicant would have preferred, it is not my role here to reassess the evidence but to determine whether the outcome is defensible on the facts and the law. In short, the Applicant has put forward no grounds that carry a reasonable chance of success on appeal.

CONCLUSION

[16] The application for leave to appeal is refused.



Member, Appeal Division