



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. V. v. Minister of Employment and Social Development*, 2016 SSTADIS 312

Tribunal File Number: AD-16-213

BETWEEN:

E. V.

Applicant

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

LEAVE TO APPEAL DECISION BY: Hazelyn Ross

DATE OF DECISION: August 12, 2016

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] The Applicant applies for leave to appeal, (the Application), the decision of the General Division of the Social Security Tribunal of Canada, (the Tribunal), of December 9, 2015. In its decision the General Division determined that she was not eligible for a disability pension under the *Canada Pension Plan*, (CPP).

REASONS FOR THE APPLICATION

[3] The Applicant has submitted that in coming to its decision the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. She submitted that the breach occurred because the General Division did not take into consideration a medical report that had been submitted to the Tribunal. (AD1B-1)

ISSUE

[4] The Appeal Division must decide if the appeal has a reasonable chance of success.

THE LAW

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), govern the granting of leave to appeal. As provided by subsection 56(1) of the DESD Act, leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division. According to subsection 56(1) “an appeal to the Appeal Division may only be brought if leave to appeal is granted.” Subsection 58(3) provides that “the Appeal Division must either grant or refuse leave to appeal.”

[6] In order to obtain leave to appeal, subsection 58(2) of the DESD Act requires an applicant to satisfy the Appeal Division that their appeal would have a reasonable chance of success; otherwise the Appeal Division must refuse leave to appeal. 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.”

[7] An applicant satisfies the Appeal Division that his appeal would have a reasonable chance of success by raising an arguable case in his application for leave.¹ In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 and in *Fancy v. Canada (Attorney General)*, 2010 FCA 63 an arguable case has been equated to a reasonable chance of success.

[8] Subsection 58(1) of the DESD Act sets out the only three grounds of appeal, which are:-

- 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] *Tracey v. Canada (Attorney General)*, 2015 FC 1300 supports the view that in assessing an application for leave to appeal the Appeal Division must first determine whether any of the Applicant’s reasons for appeal fall within any of the stated grounds of appeal.

[10] *For the reasons set out below the Appeal Division refuses leave to appeal.*

ANALYSIS

The General Division breached a principle of natural justice

[11] The Applicant submitted that the General Division breached a principle of natural justice. The principles of natural justice are concerned with ensuring that parties are able to present their cases fully; to know the case they have to meet; and to have their cases heard by an impartial decision-maker. In the administrative law context “natural justice” is particularly

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

concerned with fairness which embodies all of the above concepts and also extends to procedural fairness.

[12] The Applicant submitted that the General Division did not consider medical documentation that she had sent to the Tribunal and thereby failed to observe a principle of natural justice. She attached a letter from the Disability Processing Centre of Employment and Social Development Canada. The letter was sent to the Tribunal and the Appeal Division infers that it speaks to the reports the General Division supposedly ignored. (AD1B-3) It states, in part, “the Minister was sent additional documents received by the SST on September 10, 2015 and October 23, 2015 and forwarded to our office on September 17, 2015 and October 23, 2015.”

[13] The Tribunal record shows that the very letter was received and is listed as GD12-1. The Appeal Division infers that the Applicant has misread the statement in the letter that, “as there were no Filing or Response Periods given, unfortunately we are unable to review the information prior to the hearing date” as meaning that the General Division was rejecting her documents. That this was not the case is clear from the Tribunal’s letter to the Applicant of November 9, 2015. (AD1-15)

[14] The Applicant also attached a medical report by Dr. Ganeswaran dated September 01, 2015 that attests to the Applicant’s medical history as his patient. In his letter, Dr. Ganeswaran offered a prognosis that does not see the Applicant as being fully recovered and, therefore, disabled. He pled that she be granted a disability pension so that she could obtain financial relief. (AD1B-4) As with the letter from the Disability Processing Centre, Dr. Ganeswaran’s letter had also been before the General Division being marked as GD11-2.

[15] As the letter from the Disability Processing Centre, postdates the receipt of the documents in GD12-2, the Appeal Division infers that the documents it refers to were, in fact, Dr. Ganeswaran’s letter.

[16] On reading its decision it is evident that the General Division did receive and consider Dr. Ganeswaran’s letter of March 12, 2015: (paragraph 9). Thus, the Applicant’s submission that the General Division did not consider his letter is not supported. The AD finds no error in

the nature of either a breach of natural justice or a disregard of evidence to have occurred. Leave to appeal cannot be granted on this basis.

Financial Hardship

[17] A sub-text of the application was the financial hardship the Applicant is experiencing. She submitted that she needed money because she is a disabled person and that as, a disabled person, she entitled to the CPP disability benefit as of right. The General Division addressed this aspect of the Applicant's submission in its decision. The Member noted that financial hardship is not relevant to the determination of eligibility for a disability pensions, that is, it is not a basis on which disability benefits are paid: *Canada (MHRD) v. Rice*, 2002 FCA 47.

[18] The General Division, as the trier of fact, determined that the Applicant had retained work capacity and had failed to show that her efforts at obtaining and maintaining employment have been unsuccessful by reason of her health conditions. (para. 19). It found that she was not entitled to a disability pension.

[19] With her submissions, the Applicant is essentially asking the Appeal Division to reweigh the evidence and to come to a conclusion that is in her favour. This, however, is not the role of the Appeal Division: *Tracey*. Leave to appeal cannot be granted on this basis.

CONCLUSION

[20] The Applicant submitted that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction in its determination of whether she met the test for severe and prolonged disability contained in paragraph 42(2)(a) of the DESD Act. On the basis of the foregoing analysis, the Appeal Division is not satisfied that her submissions disclose grounds that have a reasonable chance of success on appeal.

[21] The Application is refused.

Hazelyn Ross
Member, Appeal Division