



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 334

Tribunal File Number: AD-16-556

BETWEEN:

S. S.

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: Neil Nawaz

Date of Decision: August 29, 2016

REASONS AND DECISION

DECISION

Leave to appeal is refused.

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division (GD) of the Social Security Tribunal dated January 22, 2016. The GD had conducted an in-person hearing and determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan* (CPP), as it found that her disability was not “severe” prior to the minimum qualifying period (MQP) of December 31, 2014.

[2] On April 12, 2016, within the specified time limitation, the Applicant submitted to the Appeal Division (AD) an application requesting leave to appeal detailing alleged grounds for appeal.

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

OVERVIEW

[4] The Applicant was 46 years old when she applied for CPP disability benefits on February 6, 2013. In her application, she disclosed that she had the equivalent of a Grade 12 education from Guyana, her country of origin. After moving to Canada in 1996, she held a series of factory jobs and later obtained a one-year diploma in business administration, although she never found office work. She was most recently employed by an imaging supplies manufacturer, a job she left in November 2012 because she found the stress and noise levels unbearable.

[5] At the hearing before the GD on January 11, 2016, the Applicant testified that she has suffered from depression for many years. She said that she used to be able to work despite her

condition but could no longer manage. She had good days and bad days. On good days, she went out with her husband and wished she still had a job. On bad days, she could not motivate herself to get out of bed. She was taking antidepressants to limited effect.

[6] In its decision, the GD dismissed the Applicant's appeal, finding that on a balance of probabilities, she retained work capacity and did not suffer from a severe disability as of the MQP. The GD noted that both her family doctor and her treating psychiatrist had urged her to return to employment. It also found that the Applicant had not made sufficient effort to find alternate work suitable to her limitations. Despite her English-language skills and business administration diploma, she had made no attempt to search for office work since leaving her factory job.

THE LAW

[7] 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.

[8] 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.

[9] 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.

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

[11] 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

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

SUBMISSIONS

[13] In her application requesting leave to appeal, the Applicant made the following submissions:

- (a) She has suffered from severe depression for 13 years and has already provided details about how it prevents her from working;
- (b) Although she went back to school, she would be unable to work at even a part-time job because she would not be able to meet any boss's expectations with respect to attendance or productivity.

[14] The Applicant also included with her submissions an unsigned letter dated April 4, 2016 from CAIRN Women's Family and Health in Brampton. On August 18, 2016, in response to a request from the AD for more detailed reasons for her appeal, the Applicant submitted a letter that made the following points:

- (a) The GD failed to observe natural justice and fairness. For 20 years, she has had a severe and prolonged sickness, which causes difficulties with her concentration, mood, memory, sleep and energy levels;

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

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

- (b) She was healthy when she worked as a switchboard operator in Guyana. In Canada, she returned to school but was unable to pursue her chosen career path due to her sickness;
- (c) She worked for many years in Canada despite her sickness, “popping pills” daily to help her cope with daily life, but she ended up getting sick over and over again. Her family doctor referred her to a psychiatrist, but he told her to go back to work. She tried working part-time for a few hours, but she could not manage the job. Employers do not want employees who are regularly absent.

ANALYSIS

Severe and Prolonged Condition

[15] The Applicant suggests that the GD dismissed her appeal despite medical evidence indicating that her overall condition was “severe and prolonged” according to the CPP criteria and without fully taking into account her depressive symptoms and efforts to remain employed.

[16] Outside of these broad allegations, the Applicant has not identified how, in coming to its decision, the GD failed to observe a principle of natural justice, committed an error in law or made an erroneous finding of fact. My review of the decision indicates that the GD analyzed in detail the Applicant’s claimed medical conditions—principally depression—and whether they affected her capacity to regularly pursue substantially gainful employment as of the December 31, 2014 MQP. In doing so, the GD took into account the Applicant’s education and her attempts—or lack thereof—to seek employment in a clerical environment.

[17] While applicants are not required to prove the grounds of appeal at the leave stage, they must set out some rational basis for their submissions that fall into the enumerated grounds of appeal. The AD ought not to have to speculate as to the true basis of the application. It is not sufficient for an applicant to merely state their disagreement with the decision of the GD, nor is it sufficient for an applicant to express their continued conviction that their health conditions renders them disabled within the meaning of the CPP.

[18] In the absence of a specific allegation of error, I must find the Applicant's claimed grounds of appeal to be so broad that they amount to a request to retry the entire claim. If she is requesting that I reconsider and reassess the evidence and substitute my decision for the GD's in her favour, I am unable to do this. My authority permits me to determine only whether any of the Applicant's reasons for appealing fall within the specified grounds of subsection 58(1) and whether any of them have a reasonable chance of success.

Additional Document

[19] In submitting the letter from CAIRN Women's Family and Health, the Applicant appears to be asking the AD to take it into consideration and overturn the GD's decision in her favour. This I cannot do, given the constraints of subsection 58(1) of the 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 the GD to rescind or amend its decision. However, an applicant would need to comply with the requirements set out in section 66 of the DESDA and sections 45 and 46 of 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.

CONCLUSION

[20] The Applicant has not identified grounds under subsection 58(1) that would have a reasonable chance of success on appeal. Thus, the Application is refused.



Member, Appeal Division