



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. V. T.*, 2016 SSTADIS 357

Tribunal File Number: AD-15-1351

BETWEEN:

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

Applicant

and

V. T.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Hazelyn Ross

Date of Decision: September 13, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Respondent appealed to the General Division of the Social Security Tribunal, (the Tribunal), from a reconsideration decision that denied his application for a disability pension under the *Canada Pension Plan, (CPP)*. By a decision issued September 16, 2015, the General Division determined that he was entitled to a disability pension. On January 20, 2016, the Applicant filed an application for leave to appeal, (the Application), with the Appeal Division of the Tribunal.

GROUND OF THE APPLICATION

[2] The Applicant submits that the General Division failed to observe a principle of natural justice when it failed to consider its written submissions in making its decision.

ISSUE

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

THE LAW

[4] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development, (DESD)*, Act govern the grant of leave to appeal. Subsection 56(1) provides that “an appeal to the Appeal Division may only be brought if leave to appeal is granted.” Thus, leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.

[5] Subsection 58(3) provides that “the Appeal Division must either grant or refuse leave to appeal.” In order to obtain leave to appeal, an applicant must satisfy the Appeal Division that their appeal would have a reasonable chance of success; otherwise the Appeal Division must

refuse leave to appeal.¹ In *Canada (Attorney General) v. O'Keefe* 2016 FC 503, the Federal Court examined the jurisdiction of the Appeal Division to grant leave to appeal, stating that:-

[36] Leave to appeal a decision of the SST-GD may be granted only where a claimant satisfies the SST-AD that their appeal has a “reasonable chance of success” on one of the three grounds of appeal identified in subsection 58(1) of the *DESDA*: (a) a breach of natural justice; (b) an error of law; or (c) an erroneous finding of fact made in a perverse and capricious manner or without regard for the material before it. No other grounds of appeal may be considered (*Belo-Alves*, above, at paras 71-73).

[6] 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:² *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63

[7] Subsection 58(1) of the *DESD* Act sets out the only three grounds of appeal, namely:-

- 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.

[8] *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.

SUBMISSIONS

[9] Counsel for the Applicant submitted that prior to the General Division hearing the Applicant sent its written submissions to the Tribunal. She indicated that the submissions, which

¹ 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.”

² *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

were dated March 13, 2015, outlined the Applicant's position that the Respondent was not disabled within the meaning of the CPP and were filed with the Tribunal on March 30, 2015. She added that an email was sent to the Tribunal, notifying it that it that the Applicant had transferred its submissions to the tribunal's electronic filing system. Counsel for the Applicant complained that, in its decision the General Division stated that the Applicant had not filed any submissions.

[10] Counsel for the Applicant submitted that this amounted to a breach of procedural fairness on the part of the General Division, and, therefore, an error that warranted the grant of leave to appeal.

ANALYSIS

[11] At the heart of this Application is the question of what it means to file a document with the Tribunal.

[12] The Tribunal's record indicates that it did receive an email, dated March 30, 2015, from the Applicant advising that a submission was transferred to the document exchange drive. In a letter to the Applicant the Tribunal indicated that while it received the email it did not have a record of the submission itself. Accordingly, the submissions were never added to the appeal file. It stated that when it did receive the submissions on December 3, 2015 the General Division had already issued its decision and was *functus officio* in regard to the appeal. The Tribunal record also indicates that it returned the submissions to the Applicant.

[13] The Application raises not only the issue of when a document is filed with the Tribunal, but also the question of what is the effect of a failure to consider a party's submissions.

[14] In light of this, the Appeal Division is of the view that the Applicant has raised an arguable case that it has been denied the opportunity to be heard, that is, that a possible breach of paragraph 58(1)(a) has occurred. Accordingly, leave to appeal is granted.

CONCLUSION

[15] The Application is granted.

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

Hazelyn Ross
Member, Appeal Division