



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. M. v. Minister of Employment and Social Development*, 2016 SSTADIS 358

Tribunal File Number: AD-15-416

BETWEEN:

R. M.

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: September 13, 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 June 15, 2015. The GD had earlier conducted a hearing by teleconference 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) ending December 31, 2014.

[2] On June 30, 2015, the Applicant filed an incomplete application for leave to appeal with the Appeal Division (AD) of the Social Security Tribunal. The AD requested the missing information by way of a letter dated July 6, 2015, but the Applicant did not respond until July 26, 2016, at which point the application was deemed complete. For this application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

THE LAW

[3] 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.

[4] 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.

[5] 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.

[6] 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

[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] In a letter accompanying the application requesting leave to appeal, the Applicant expressed her disappointment with the GD's decision and alleged it contained discrepancies, although she did not offer any details.

[10] In a letter dated July 21, 2016, the Applicant wrote that she had been a law-abiding resident of Canada for 44 years and a citizen since 1982. It was not her choice to get ill, and she would have preferred to be working, rather than "staring at the walls." She said she was in financial need, and her marriage was deteriorating. She had contributed to the CPP and felt that the government, like the education system and her employer, was victimizing her.

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

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

ANALYSIS

[11] In essence, the Applicant's submissions are no more than expressions of disagreement with the decision of the GD to deny her CPP disability benefits. Although she was invited more than once to specify grounds of appeal, outside of vague allegations of "discrepancies," she 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.

[12] My review of the decision indicates that the GD analyzed in detail the Applicant's claimed medical conditions—principally the after-effects of a cerebral aneurism—and whether they affected her capacity to regularly pursue substantially gainful employment during the MQP. In doing so, the GD took into account the Applicant's testimony and her neurosurgeon's prognosis, before concluding there were no significant impediments to her ability perform some form of alternate work.

[13] 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 her continued conviction that her health conditions render her disabled within the meaning of the CPP.

[14] It is clear that the Applicant is unhappy with the GD's decision, but in the absence of a specific allegation of error, I find that her claimed grounds of appeal are 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 as a member of the AD 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.

[15] I see no reasonable chance of success on any ground claimed by the Applicant.

CONCLUSION

[16] The application is refused.



Member, Appeal Division