Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *N. G. v. Minister of Employment and Social Development*, 2016 SSTADIS 504

Tribunal File Number: AD-16-872

BETWEEN:

N. G.

Applicant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: December 22, 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 8, 2016. 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) of December 31, 1997.

[2] On June 27, 2016, the Applicant submitted to the Appeal Division (AD) an incomplete application requesting leave to appeal. Following a request for further information, the Applicant perfected her appeal on July 7, 2016, within the specified time limitation. 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 her application requesting leave to appeal and in a follow-up letters dated May 25, 2016, the Applicant submitted that, in rendering its decision, the GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. She declared the medical reports of Dr. Ein and Dr. Cooper, dated October 2014 and June 2015, respectively, "self-explanatory" and insisted that she qualified for CPP disability benefits.

[10] In a letter dated November 25, 2016, the AD reminded the Applicant of the specific grounds of appeal permitted under subsection 58(1) and asked her to provide more detailed reasons for her request for leave. The Applicant replied by way of a letter dated December 6, 2016, repeating her earlier allegation that the GD had failed to observe a principle of natural justice and again directing the AD's attention to reports from Drs. Ein and Cooper. In a letter

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[1] *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (QL).
[2] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

dated December 9, 2016, the Applicant enclosed an additional medical report and cited her need for financial help.

[11] The Applicant also included with her submissions medical reports by Dr. Jerry Cooper, dated October 5, 2016, and Dr. Tim Cook, dated November 10, 2016, along with various prescriptions and receipts.

ANALYSIS

[12] The Applicant suggests that the GD dismissed her appeal despite medical evidence indicating that her condition was "severe and prolonged" according to the criteria governing CPP disability.

[13] However, outside of this broad allegation, 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 Lyme disease and chronic fatigue —and how they affected her capacity to regularly pursue substantially gainful employment as of the December 31, 1997 MQP. In doing so, the GD took into account the Applicant's background and her employment history in the nearly 20 years that have elapsed since she was last eligible for CPP disability benefits.

[14] 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. It is not sufficient for an applicant to merely state their disagreement with the decision of the GD, nor is it enough to express their continued conviction that their health conditions renders them disabled within the meaning of the CPP.

[15] In her submissions, the Applicant pointed to selected medical reports that she evidently believes the GD overlooked, but it is settled law that an administrative tribunal charged with finding fact is presumed to have considered all of the evidence before it and need not discuss each and every element of a party's submissions.[3] That said, I have reviewed the GD's

[3]. *Simpson v. Canada (Attorney General),* 2012 FCA 82.

decision and see no indication that it ignored, or gave inadequate consideration to, any significant component of the Applicant's evidence or submissions.

[16] The GD's decision contains a detailed overview of the medical evidence, including what appear to be comprehensive summaries of Dr. Ein's and Dr. Cooper's reports. The decision closes with an analysis that suggests the GD meaningfully assessed the evidence and had defensible reasons supporting its conclusion that there was insufficient evidence of a disabling condition as of the MQP. In refusing the Applicant's claim, the GD cited her failure to provide any contemporaneous medical reports dated prior to December 31, 1997 documenting the severity of her condition.

[17] Included with the Applicant's request for leave to appeal were two medical reports that were prepared after the issuance of the GD's decision. An appeal to the AD is not ordinarily an occasion on which additional evidence can be considered, given the constraints of subsection 58(1) of the DESDA, which do not give the AD any authority to make a decision based on the merits of the case. Once a hearing is 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.

[18] While the GD's analysis did not arrive at the conclusion the Applicant would have preferred, it is not my role to reassess the evidence but to determine whether the decision is defensible on the facts and the law. An appeal to the AD is not an opportunity for an applicant to re-argue their case and ask for a different outcome. My authority permits me only 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.

[19] I see no arguable case for the grounds claimed by the Applicant.

CONCLUSION

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

Member, Appeal Division