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

Citation: *A. M. v. Minister of Employment and Social Development,* 2016 SSTADIS 507

Tribunal File Number: AD-16-851

BETWEEN:

A. M.

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 23, 2016

Canada

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 March 7, 2016. The GD had earlier conducted a hearing by videoconference 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" during her the minimum qualifying period (MQP), which ended November 30, 1996.

[2] On June 21, 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 August 3, 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, the Applicant wrote that she did not agree with the GD's decision. She said that her case was not "represented clearly" and suggested that the GD's observations were incorrect. She maintained that her medical reports showed that she suffered from pain which prevented her from working.

[10] In a letter dated July 25, 2016, the Applicant added that she had been suffering from fibromyalgia, arthritis and diabetes for more than 20 years. Her life was a daily struggle, and her appeal should not have been denied. She had recently relocated and was still looking for a new family doctor, who could refer her to a new specialist. Her previous specialist, Dr. Choy, had passed away, and she required more time to obtain his medical records.

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

[11] In a letter dated December 5, 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 responded by way of a fax dated December 19, 2016 pleading that she had already forwarded all the information for which she had been asked. She said she was still sick and dealing with pain that made it difficult for her to find a job.

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 medical conditions—among them morbid obesity, diabetes mellitus, osteoarthritis, fibromyalgia, chronic pain syndrome and general anxiety disorder—and how they affected her capacity to regularly pursue substantially gainful employment. In doing so, the GD took into account the Applicant's education and employment history before concluding there was insufficient evidence of incapacity as of November 30, 1996.

[14] As an aside, I note that the GD referred to an MQP of "2006" in paragraph 17 of its decision. Having examined the Record of Earnings on file for the Applicant, I am satisfied that this is a typographical error and was not material to the GD's decision.

[15] 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.

[16] In her submissions, the Applicant suggested that her case was not presented well, although I am unsure whether she was referring to the content of her oral submissions or how

they were translated by the professional interpreter of Arabic who was made available at the hearing. If the former, it was open to the Applicant to seek legal assistance during the more than 1½ years it took for the appeal to come to hearing. If the latter, I must presume that interpretation was performed accurately unless the Applicant can cite specific instances of alleged mistranslation or misrepresentation of the true meaning of her testimony. In this case, she has not provided any examples of such instances.

[17] The Applicant also said that she required more time to solicit medical reports. She should be aware that an appeal to the AD is not ordinarily an occasion in which medical evidence that was not before the GD can be considered. Again, I must note that the Applicant has not lacked opportunity to assemble her case: More than 2½ years passed between the date on which she applied for CPP disability benefits and the date on which her hearing was held.

[18] I have reviewed the GD's decision and see no indication that it ignored, or gave inadequate consideration to, any significant component of the evidence that was before it. The GD's decision contains a detailed overview of the Applicant's testimony and available medical evidence. It 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.

[19] 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.

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

CONCLUSION

[21] 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