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

Citation: *K. A. v. Minister of Employment and Social Development*, 2016 SSTADIS 508

Tribunal File Number: AD-16-998

BETWEEN:

K. A.

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 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 June 22, 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 his disability was not "severe" prior to the minimum qualifying period (MQP) of December 31, 2012.

[2] On August 4, 2016, within the specified time limitation, the Applicant submitted an application to the Appeal Division (AD) requesting leave to appeal. For this application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

THE LAW

[3] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

[4] 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.

[5] 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.

[6] 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.

[7] 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]

[8] 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

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

SUBMISSIONS

[10] In his application requesting leave to appeal, the Applicant alleged that the GD based its decision on erroneous findings of fact and specifically failed to consider:

- His age (at present 56 years old);
- The length of time (seven years) since he had last worked;
- His diagnosis of post-acute withdrawal syndrome;
- His medical records going back decades;

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

- His disability (the GD merely stated that he had “limitations”).

ANALYSIS

[11] The Applicant suggests that the GD dismissed his appeal despite medical evidence indicating that his condition was “severe and prolonged” according to the criteria governing CPP disability.

[12] 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 the Applicant’s claimed medical conditions—principally anxiety, depression, and alcoholism—and how they affected his capacity to pursue regularly substantially gainful employment. In doing so, the GD took into account the Applicant’s education and employment history before concluding that he had residual capacity as of the MQP ended December 31, 2012.

[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. 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 render them disabled within the meaning of the CPP.

[14] The Applicant pointed to various aspects of his submissions before the GD that he believes were 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 decision and see no indication that it ignored, or gave inadequate consideration to, any significant component of the Applicant’s evidence.

[15] Contrary to the Applicant’s submissions, the GD, in paragraph 30 of its decision, explicitly took into account the Applicant’s age (52) as of the MQP. In the next paragraph, the

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

GD acknowledged that the Appellant had not worked since 2009, but found he had made insufficient effort to seek alternative employment since then. His diagnosis of post-acute withdrawal anxiety was noted several times throughout the decision, but the GD ultimately concluded, based on Dr. Gelber's report dated July 25, 2013, that the effects of the syndrome were temporary. The Applicant took issue with the GD's use of the term "impairment," but the GD was within its authority to find that he suffered from impairments that fell short of a "disability," as defined by the paragraph 42(2)(a) of the CPP.

[16] The GD's decision contains a detailed overview of the Applicant's testimony and available medical evidence and 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. While it 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.

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

CONCLUSION

[18] 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