



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 193

Tribunal File Number: AD-16-1149

BETWEEN:

R. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: April 28, 2017

REASONS AND DECISION

DECISION

Leave to appeal is refused.

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division of the Social Security Tribunal of Canada (Tribunal) dated June 27, 2016. The General Division 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), because his disability was not severe during his minimum qualifying period, which was due to end on December 31, 2016.

[2] On September 22, 2016, within the specified time limitation, the Applicant submitted an incomplete application requesting leave to appeal to the Appeal Division. Following a request for further information, the Applicant perfected his appeal on October 27, 2016.

[3] For this application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

THE LAW

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESDA), an appeal to the Appeal Division may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[5] Subsection 58(2) of the DESDA provides that leave to appeal is refused if the Appeal Division 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 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 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 an initial hurdle for an 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 a letter dated September 22, 2016, the Applicant noted that that the General Division heard his appeal on June 22, 2016 and issued its decision on the same day. He felt that the General Division had not reviewed his case thoroughly, and he had difficulty understanding its decision. He disclosed that on August 11, 2016, he received cortisone shots, as recommended, but experienced no relief. If anything, his condition had deteriorated, prompting his doctor to increase his pain medications. Both his doctor and his specialist said that he was unable to work.

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 follow-up letter dated September 24, 2016, the Applicant stated that he did not understand what was needed to complete the appeal. He said that he had an appointment with his orthopedic surgeon in November.

[12] In a letter dated April 13, 2017, the Tribunal reminded the Applicant of the specific grounds of appeal permitted under subsection 58(1) of the DESDA and asked him to provide, within a reasonable timeframe, more detailed reasons for his request for leave. On April 15, 2017, the Applicant replied with a medical update—he had surgery scheduled for April 12, 2017, with a follow-up two weeks later. He promised to forward any resulting medical reports when he received them.

ANALYSIS

[13] The thrust of the Applicant’s submissions is that the General Division dismissed his appeal despite medical evidence indicating that his condition was “severe and prolonged” according to the criteria governing CPP disability.

[14] However, outside of this broad allegation, the Applicant did not specify how, in coming to its decision, the General Division failed to observe a principle of natural justice, committed an error in law or made an erroneous finding of fact. Indeed, I could identify only one submission that potentially fell into one of the enumerated categories of subsection 58(1): the fact that the General Division released its decision on the same day as the hearing, which suggested to the Applicant that his appeal was given scant attention. Unfortunately, I do not see an arguable case on this point.

[15] The mere fact that the General Division prepared and finalized its decision within several hours of the hearing does not necessarily mean that it inadequately considered the Applicant’s evidence and arguments. It should be kept in mind that the hard work of reviewing the available documentary evidence can (and should) be done in advance of the oral hearing; in any event, the proof of whether a particular disposition or outcome is supported by considered reasons lies in the written decision itself. My review of the decision in this case indicates that the General Division analyzed in detail the Applicant’s medical conditions—primarily bilateral osteoarthritis of the knees—and how they affected his capacity to regularly pursue substantially

gainful employment. In doing so, the General Division took into account the Applicant's education and employment history before concluding there was insufficient evidence of incapacity as of the hearing date. The General Division's decision closed with an analysis that suggests it meaningfully assessed the evidence and had defensible reasons supporting its conclusion. I see no indication that the General Division ignored, or gave inadequate consideration to, any significant component of the evidence that was before it.

[16] For the most part, the Applicant's submissions recapitulate evidence and arguments that, from what I can gather, were already presented to the General Division. Unfortunately, the Appeal Division has no mandate to re-hear disability claims on their merits. 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 correspond to the grounds of appeal set out in subsection 58(1) of the DESDA. It is not sufficient for an applicant to merely state their disagreement with the General Division's decision, nor is it enough to express their continued conviction that their health conditions render them disabled within the meaning of the CPP.

[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