



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. K. v. Minister of Employment and Social Development*, 2017 SSTADIS 275

Tribunal File Number: AD-16-742

BETWEEN:

L. K.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Nancy Brooks

Date of Decision: June 13, 2017

REASONS AND DECISION

[1] The Applicant seeks leave to appeal the decision of the General Division of the Social Security Tribunal of Canada issued on February 26, 2016, in which the General Division determined he was not eligible for a disability pension under the *Canada Pension Plan* (CPP) because his disability was not “severe” on or before the minimum qualifying period date of December 31, 2014.

[2] Appeals to the Appeal Division are governed by Part 5 of the *Department of Employment and Social Development Act* (DESDA). In accordance with s. 56(1) of the DESDA, “An appeal to the Appeal Division may only be brought if leave to appeal is granted.”

[3] The requirement to obtain leave to appeal serves the objective of eliminating appeals that have no reasonable chance of success: *Bossé v. Canada (Attorney General)*, 2015 FC 1142, at para. 34, and leave will be granted only where the Applicant demonstrates that the appeal has a reasonable chance of success on one or more of the grounds identified in s. 58(1) of the DESDA: *Belo-Alves v. Canada (Attorney General)*, 2014 FC 1100, at paras. 70–73.

[4] Subsection 58(1) of the DESDA states that 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 that it made in a perverse or capricious manner or without regard for the material before it.

The use of the word “only” in s. 58(1) means that no other grounds of appeal may be considered:

Belo-Alves v. Canada (Attorney General), 2014 FC 1100, at para. 72.

[5] Accordingly, before leave can be granted, I need to be satisfied that the arguments for appeal fall within one of the grounds of appeal and that the appeal has a reasonable chance of success.

[6] The Applicant submits that his disability is severe, noting that his doctor has told him he has a frozen shoulder that cannot be fixed. The Applicant's representative submits that leave to appeal should be granted because the Applicant's appeal has a reasonable chance of success under s. 58(1)(a) of the DESDA, i.e. that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. In fact, based on the substance of his very brief submissions, the representative is simply tendering further evidence to support his contention that the Applicant should be found to be disabled within the meaning of the CPP.

[7] In his submissions, the Applicant's representative refers to a letter dated January 15, 2016, that was before the General Division:

This letter [of January 15, 2016], by general practitioner Dr. Nadeem Jaffri, indicates [the Applicant's] medical condition of tendonitis in the left shoulder is not improved and in fact, is chronic. Based on this medically accurate information, I strongly feel the appeal decision should be granted in [the Applicant's] favour. In addition, Dr. Jaffri has issued another medical letter dated June 15, 2016 that continues to support the chronic condition of tendonitis and frozen shoulder [the Applicant] is experiencing in his left shoulder.

[8] The representative has included a copy of the June 15, 2016, letter with his submissions.

[9] As the Federal Court recently confirmed in *Parchment v. Canada (Attorney General)*, 2017 FC 354, at para. 23, "In considering the appeal, the Appeal Division has a limited mandate. They have no authority to conduct a rehearing [...]. They also do not consider new evidence." (See also *Marcia v. Canada (Attorney General)*, 2016 FC 1367.) These principles apply at the leave to appeal stage as well as on appeal. Although there are limited exceptions to this principle, neither applies in this case. Therefore, the June 15, 2016, letter is not admissible and I have not considered it further.

[10] The Applicant is, essentially, requesting a reassessment of the evidence in order that I reach a different result. However, it is not the Appeal Division's role to hear the case *de novo* or re-weigh the evidence: *Marcia v. Canada (Attorney General)*, 2016 FC 1367, and an appeal to the Appeal Division is not an opportunity to re-argue the case and ask for a different outcome.

[11] I bear in mind the Federal Court's decision in *Griffin v. Canada (Attorney General)*, 2016 FC 874, where Justice Boswell provided guidance as to how the Appeal Division should address applications for leave to appeal under s. 58(1) of the DESDA:

[20] It is well established that the party seeking leave to appeal bears the onus of adducing all of the evidence and arguments required to meet the requirements of subsection 58(1): see, e.g., *Tracey*, above, at para 31; also see *Auch v. Canada (Attorney General)*, 2016 FC 199 at para 52, [2016] FCJ No 155. Nevertheless, the requirements of subsection 58(1) should not be applied mechanically or in a perfunctory manner. On the contrary, the Appeal Division should review the underlying record and determine whether the decision failed to properly account for any of the evidence: *Karadeolian v. Canada (Attorney General)*, 2016 FC 615 at para 10, [2016] FCJ No 615. (Underlining added.)

[12] I have reviewed the underlying record and have not identified any instance of where the General Division member failed to properly account for any of the evidence.

[13] I conclude that the proposed appeal has no reasonable chance of success.

[14] The application for leave to appeal is refused.

Nancy Brooks
Member, Appeal Division