



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. M. v. Minister of Employment and Social Development*, 2017 SSTADIS 411

Tribunal File Number: AD-16-1168

BETWEEN:

**M. M.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Shirley Netten

Date of Decision: August 17, 2017

## REASONS AND DECISION

[1] On August 1, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was not payable. The Applicant seeks leave to appeal that decision to the Appeal Division of the Tribunal.

[2] The only grounds of appeal to the Appeal Division are those identified in s. 58(1) of the *Department of Employment and Social Development Act* (DESDA):

- 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.

[3] Pursuant to s. 56(1) of the DESDA, “An appeal to the Appeal Division may only be brought if leave to appeal is granted.” Subsection 58(2) of the DESDA provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[4] The leave to appeal proceeding is a preliminary step to an appeal on the merits. It is an initial and appreciably lower hurdle to be met. The Applicant does not have to prove the case at the leave stage: *Kerth v. Canada (Minister of Human Resources Development)*, 1999 CanLII 8630 (FC). Rather, the Applicant is required to establish that the appeal has a reasonable chance of success. This means having, at law, some arguable ground upon which the proposed appeal may succeed: *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41. The Appeal Division should not weigh the evidence at the leave stage, or dispose of the case on the merits; leave should be granted unless the Appeal Division concludes that “no one could reasonably believe in [the appeal’s] success”: *Canada (Attorney General) c. Bernier*, 2017 FC 120.

[5] In response to a request for clarification from the Appeal Division, the Applicant's representative has identified two grounds of appeal. He first asserts that proceeding by teleconference at the General Division may have denied the Applicant a reasonable opportunity to present her case, given the Applicant's particular circumstances as well as technological limitations during the hearing. In this respect, the representative's pleadings raise a concern that, if proven, could establish a failure to observe a principal of natural justice. Beyond this, I need not consider, at this stage, the strength or merits of this argument. The Applicant has raised an arguable case with respect to a possible breach of natural justice, and leave to appeal is granted on this basis. The Applicant's representative is directed to include, in his submissions to follow, reference to the timestamps on the recording of the hearing that support his claims.

[6] Having found that there is an arguable case on one ground of appeal, I need not consider any other grounds raised by the Applicant at this time. Subsection 58(2) does not require that individual grounds of appeal be considered and accepted or rejected, and subsection 58(3) directs the Appeal Division to either grant or refuse leave to appeal. Leave to appeal is granted, and the Applicant is not restricted in her ability to pursue the second ground of appeal raised by her representative. I note that the representative asserts an evidentiary error related to the General Division's application of certain jurisprudence and its consideration of a particular report, without identifying a specific error of law or erroneous finding of fact upon which the decision was based. If the Applicant's representative intends to pursue this ground of appeal, he is asked to further clarify the claimed error in his submissions.

## **CONCLUSION**

[7] The application for leave to appeal is granted. In light of the Applicant's request to have her appeal expedited, the parties are encouraged to file their submissions (or notice that they have no further submissions) at the earliest opportunity. I am mindful, however, that the parties are entitled to 45 days under s. 42 of the *Social Security Tribunal Regulations*.

[8] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Shirley Netten  
Member, Appeal Division