



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. T. v. Minister of Employment and Social Development*, 2017 SSTADIS 434

Tribunal File Number: AD-17-99

BETWEEN:

F. T.

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: August 25, 2017

REASONS AND DECISION

DECISION

Leave to appeal is refused.

INTRODUCTION

[1] The Applicant seeks leave to appeal a decision of the General Division of the Social Security Tribunal of Canada (Tribunal) dated November 23, 2016. The General Division had conducted a hearing on the basis of the documentary record and determined that the Applicant was ineligible for the disability benefit under the *Canada Pension Plan* (CPP) because her disability was not “severe” prior to the minimum qualifying period (MQP), which ended on December 31, 1988.

[2] On February 3, 2017, within the specified time limitation, the Applicant submitted an incomplete application requesting leave to appeal to the Appeal Division. Following a request for additional information, the Applicant completed her appeal on February 28, 2017.

ISSUE

[3] The Appeal Division must decide whether this 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. The Appeal Division must either grant or refuse leave to appeal.

[5] 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.

[6] 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.

[7] Some arguable ground upon which the proposed appeal might succeed is needed for leave to appeal 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 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 to appeal stage, the Applicant does not have to prove the case.

SUBMISSIONS

[9] In her application requesting leave, which was signed and dated December 23, 2016, the Applicant demanded to know why the General Division had dismissed her appeal, despite proof of her disability. She insisted that she could not work because of pain and sickness. She added that she needed support and asked whether she was eligible for any other type of pension.

[10] In a letter dated February 7, 2017, the Tribunal reminded the Applicant of the specific grounds of appeal permitted under subsection 58(1) of the DESDA and asked her to provide, within a reasonable timeframe, more detailed reasons for the request for leave to appeal. On February 28, 2017, she replied with a letter alleging that the General Division had made an important error regarding the facts: In its decision, it indicated that she did not submit any

¹ *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No 1252 (QL)

² *Fancy v. Canada (Attorney General)*, 2010 FCA 63

medical reports when in fact there were several in the file. The General Division also found that she did not report taking medications at the relevant time, although the Applicant insists that she did, and continues to do so, for osteoarthritic pain in her legs.

ANALYSIS

[11] I do not see an arguable case on any of the grounds put forward by the Applicant. Her initial submissions amounted to a recapitulation of the case she had already presented to the General Division. In essence, she sought to reargue that she was suffering from a severe and prolonged disability as of December 31, 1988. However, the Appeal Division has no mandate under the DESDA to re-hear evidence on its merits and is permitted to consider only those grounds that fall under the categories described in subsection 58(1).

[12] While the Applicant may not agree with the General Division's conclusions, it is open to an administrative tribunal to sift through the relevant facts, assess the quality of the evidence, determine what evidence, if any, it might choose to accept or disregard, and to decide on its weight. In her second letter, the Applicant alleged that the General Division neglected an item of documentary medical evidence, but my review of the record suggests that it conducted a thorough survey of the available evidence and fairly summarized every medical report that was before it. Ultimately, the General Division found nothing that pertained to the period, nearly 30 years in the past, when the Applicant last had coverage.

[13] The thrust of the Applicant's submissions is that I reconsider and reassess the documentary evidence and decide in her favour. I am unable to do this, as my authority permits me to determine only whether any of the Applicant's reasons for appealing fall within the enumerated grounds of subsection 58(1), and whether any of them have a reasonable chance of success. It is important to keep in mind that the burden of proof in CPP disability claims lies with the claimant. In this case, it was the job of the Applicant—not the Respondent or the General Division—to show that she was entitled to the CPP disability benefit. I saw nothing to indicate that the General Division erred in finding that she had failed to discharge that burden.

CONCLUSION

[14] As the Applicant has not identified any grounds of appeal under subsection 58(1) of the DESDA that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.



Member, Appeal Division