



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. E. v. Minister of Employment and Social Development*, 2017 SSTADIS 520

Tribunal File Number: AD-17-566

BETWEEN:

D. E.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: October 5, 2017

REASONS AND DECISION

INTRODUCTION

[1] On July 19, 2017, the General Division of the Social Security Tribunal of Canada determined that a disability pension under the *Canada Pension Plan* was not payable. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on August 10, 2017.

ANALYSIS

[2] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found that an arguable case at law is akin to whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[3] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the Act sets out the only grounds of appeal that can be considered to grant leave to appeal a decision of the General Division (the section is set out in the Appendix to this decision). I must therefore decide if the Applicant has presented a ground of appeal under s. 58 of the Act that may have a reasonable chance of success on appeal.

[4] The Applicant submitted that she should be granted leave to appeal because the General Division decision was based on erroneous findings of fact made without regard to the material before it. In particular she argued that the General Division decision referred to her reluctance to take medication, but not the reason for this. The General Division decision summarized the evidence presented, including that the Appellant testified that she had a phobia of medication, and that Dr. Ottley wrote of the Appellant's great reluctance to take medication. The decision also states that the Applicant suffered side effects from some medication and that she benefitted from some pain and antidepressant medication. The General Division did not make any error of fact in this regard. This argument is not a ground of appeal that may have a reasonable chance of success on appeal.

[5] The Applicant also contended that the General Division erred because it did not take into account the reason for her refusal to undergo gastric bypass surgery. The decision states that the Applicant refused this treatment because she thought it was too drastic for her circumstances and someone she knew had a poor outcome from this surgery. The decision states in addition that the Appellant did not take consistent steps to lose weight, which had been repeatedly recommended to her. The Applicant testified that she did not have a scale and had likely not lost weight. At the time of the hearing she was not exercising regularly. The General Division considered this along with the other evidence before it and concluded that the Applicant had not met her obligation to try to improve or mitigate her circumstances. The decision contains no error of fact, nor was it made without regard to the material before it. This ground of appeal does not have a reasonable chance of success on appeal.

[6] A review of the record does not disclose any other grounds of appeal that may have a reasonable chance of success on appeal.

CONCLUSION

[7] The Application is refused as the Applicant did not present a ground of appeal that may have a reasonable chance of success on appeal.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) The only grounds of appeal are that

- (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.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.