Citation: *C. B. v. Minister of Employment and Social Development*, 2014 SSTAD 300

Appeal No: AD-13-60

BETWEEN:

C. B.

Appellant

and

Minister of Employment and Social Development
(Formerly Minister of Human Resources and Skills Development)

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

DATE OF DECISION: October 17 2014

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

INTRODUCTION

[2] On June 17, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension not payable. The Applicant filed an application for leave to appeal (the Application) with the Appeal Division of the Social Security Tribunal (the Tribunal) on August 7, 2013.

ISSUE

[3] The Tribunal must decide whether 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 (DESD) Act*, "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal".

[5] Subsection 58(1) of the DESD Act 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.

[6] The decision of the Review Tribunal is considered a decision of the General Division.

[7] Subsection 58(2) of the DESD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

SUBMISSIONS

[8] The Applicant submitted the following arguments in support of the Application:

a) The Review Tribunal erred in not finding her disability to be severe and prolonged;

b) The Review Tribunal did not appreciate the nature and severity of her disability, and the totality of the medical evidence;

c) The Review Tribunal did not consider her condition in accordance with the law as set out in *Villani v. Canada (Attorney General)*, 2001 FCA 248 and *Croskery v. MHRD* (May 6, 1999, CP11166, PAB), including the commercial realities test;

[9] The Respondent made no submissions.

ANALYSIS

[10] Although a leave to appeal application is a first, and lower, hurdle to meet than the one that must be met on the hearing of the appeal on the merits, some arguable ground upon which the proposed appeal might succeed is needed in order for leave to be granted: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC).

[11] Furthermore, the Federal Court of Appeal has found that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[12] The Appellant presented a number of arguments to support her Application. First, she argued that the Review Tribunal erred by not finding that her disability was severe and prolonged. In essence, she disagreed with the conclusion reached by the Review Tribunal. Section 58 of the DESD Act sets out very narrow grounds of appeal that may be considered by the Tribunal. Disagreement with the conclusion reached does not fall within these grounds. Therefore, this argument does not have a reasonable chance of success on appeal.

[13] The Appellant also argued that the Review Tribunal did not appreciate the nature and severity of her condition, and all of the medical evidence. The Review Tribunal decision summarized the oral and documentary evidence before it. In *Roy v. Minister of Human Resources and Skills Development* (2009 FC 312) the Court concluded that while a decision may be unreasonable if it ignores relevant evidence, it does not have to mention and discuss every piece of evidence placed before it. The Appellant did not allege that relevant evidence had been ignored, and did not provide any examples of ignored evidence.

[14] In addition, in *Simpson v. Canada (Attorney General)* (2012 FCA 82) the Federal Court of Appeal held that a tribunal is presumed to have considered all of the evidence before it. A court hearing an appeal may not normally substitute its view of the probative value of the evidence for that of the tribunal that made the findings of fact. The Appellant, by her argument that the nature of her condition and the medical evidence was not appreciated, essentially asks this Tribunal to substitute its view of the findings of fact. This is not an argument that has a reasonable chance of success on appeal.

[15] Finally, the Appellant argued that her condition was not assessed in light of the decisions of the Court in *Villani* and *Croskery*. These decisions state that when determining whether a claimant is disabled, the tribunal must examine their condition in light of their personal circumstances including their age, education, life and work experience and commercial realities. The Review Tribunal decision did so. In reaching its conclusion, it stated that the Appellant had some high school and college education, and was 42 years of age. The decision also discussed her work history. Therefore, this argument also does not have a reasonable chance of success on appeal.

CONCLUSION

[16] The Application is refused for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division