Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *C. D. v. Minister of Employment and Social Development,* 2017 SSTADIS 573

Tribunal File Number: AD-17-592

BETWEEN:

C. D.

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 30, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On June 2, 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 28, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. According to subsections 56(1) and 58(3) of the DESD Act, an appeal to the Appeal Division may be brought only if leave to appeal is granted, and the Appeal Division must either grant or refuse leave to appeal.

[3] The only grounds of appeal available to the Appeal Division under the DESD Act 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.

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

[5] I must therefore decide whether the Applicant has presented a ground of appeal under section 58 of the DESD Act that may have a reasonable chance of success on appeal.

[6] The Applicant presents three grounds of appeal, each suggesting that the General Division decision was based on an erroneous finding of fact made in a perverse or capricious

manner or without regard to the material before the General Division. First, she submits that leave to appeal should be granted because the General Division did not consider a letter from the Applicant's family doctor that explained her medical restrictions, and that she stopped attending for physiotherapy because it was not benefitting her. The decision contains a thorough summary of the documentary evidence, as well as the testimony given at the hearing. The letters penned by the family doctor, the physiotherapist and the neurologist are specifically noted. Paragraph 38 of the decision states, "While Dr. Chabikuli's short letter in December 2016 states that she will not be able to pursue any substantial gainful employment is noted, it does not give specific assistance as to her limitations, treatment and condition at that time." Clearly, this letter from the family doctor was considered to reach the decision in this case. This ground of appeal does not have a reasonable chance of success on appeal.

[7] Second, the Applicant argues that the fact that she could not recall the side effects or risks associated with specified injections should not have been weighed against her. With this argument, the Applicant essentially asks the Appeal Division to re-evaluate and reweigh the evidence that was put before the General Division. This is the province of the trier of fact, which is the General Division in this case. The tribunal deciding whether to grant leave to appeal ought not to substitute its view of the persuasive value of the evidence for that of the General Division, which made the findings of fact: *Simpson v. Canada (Attorney General)*, 2012 FCA 82. Therefore, I find that this argument does not raise a ground of appeal that may have a reasonable chance of success.

[8] Finally, the Applicant sought to file an additional medical report. Section 58 of the DESD Act does not provide for the provision of new evidence as a ground of appeal. The provision of new evidence, no matter how supportive it may be, does not point to any reviewable error that the General Division made. This is not a ground of appeal under section 58 of the DESD Act.

[9] I have also reviewed the written record and am satisfied that the General Division did not overlook or misconstrue any important evidence.

CONCLUSION

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

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.