



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. R. v. Minister of Employment and Social Development*, 2017 SSTADIS 563

Tribunal File Number: AD-17-565

BETWEEN:

R. R.

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 27, 2017

REASONS AND DECISION

INTRODUCTION

[1] On May 9, 2017, 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 filed an application for leave to appeal with the Tribunal's Appeal Division on August 10, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operations. 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 the appeal has no reasonable chance of success.

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

[6] In the application for leave to appeal, the Applicant argues that the General Division erred in law because it did not consider the totality of his medical conditions. He did not specify what medical conditions were not considered. The Applicant claims that he was disabled by mental illness (depression with aspects of post-traumatic stress). The medical reports that the Applicant produced to support his claim were summarized in the decision and clearly considered in this appeal along with the Applicant's testimony to conclude that the Applicant was not disabled.

[7] The decision did not refer specifically to the Applicant's high blood pressure, high cholesterol, or diabetes, however, there was no indication that these conditions were being treated specifically or that they impacted the Applicant's capacity to work. There is no indication that the Applicant claimed that these conditions were disabling.

[8] In addition, the General Division decision, in paragraph 22, states clearly that the cumulative effect of all of the medical conditions was considered.

[9] I am therefore not satisfied that this ground of appeal has a reasonable chance of success on appeal.

[10] The Applicant also contends that more weight should be given to a particular medical report. This report was considered by the General Division. It is the General Division's task to receive all of the evidence, and to decide what evidence should be given more weight. It is not for the Appeal Division, in deciding whether to grant leave to appeal, to reweigh the evidence to reach a different conclusion than that of the General Division (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). This is not a ground of appeal that may have a reasonable chance of success on appeal.

[11] Finally, the Applicant submits that the General Division did not consider that his mental illness could not be accommodated. This was not specifically considered in the General Division decision. However, the decision clearly states that the Applicant made no efforts to retrain or to attempt other work. Without any such evidence, the General Division would not be able to assess whether the Applicant's condition could be accommodated. The General Division

cannot be faulted for not deciding this question when it did not have any evidence upon which to base this decision. This ground of appeal also does not have a reasonable chance of success.

[12] I have reviewed the documentary record and am satisfied that the General Division did not overlook or misconstrue any important evidence for the reasons set out above.

CONCLUSION

[13] I am not satisfied that the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal. The application for leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division