



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *E. R. v. Minister of Employment and Social Development*, 2017 SSTADIS 571

Tribunal File Number: AD-17-572

BETWEEN:

E. 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 30, 2017

REASONS AND DECISION

INTRODUCTION

[1] On May 10, 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 14, 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 that the appeal has no reasonable chance of success.

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

[6] The Applicant first argues that leave to appeal should be granted because the General Division hearing was conducted by teleconference although she had requested an in-person hearing. The decision of what form a hearing should take before the Tribunal is a discretionary one. The Applicant did not suggest that as a result of the hearing being held by teleconference she could not present her case, answer the case against her or have the decision made by an impartial decision-maker based on the law and the facts. She did not indicate what evidence or argument she could not present by telephone. I am therefore not satisfied that having the hearing conducted by teleconference breached the principles of natural justice. This is not a ground of appeal that may have a reasonable chance of success on appeal.

[7] The Applicant also contends that the General Division decision was based on erroneous findings of fact made in a perverse or capricious manner or without regard to all of the material before it. For the reasons that follow, I am satisfied that the following grounds of appeal may have a reasonable chance of success on appeal.

[8] The Applicant suffers from a number of medical conditions. One of the conditions is depression. The Applicant contends that the decision erred when it stated that there was no further follow-up treatment for this condition after an assessment by a psychiatrist. Although she did not continue to receive treatment from him, she continued with counselling from a community organization, and continued to take medication for depression. The General Division decision did not consider the Applicant's ongoing treatment or the change in her medication, but found that there was no further follow-up after the psychiatric assessment. This may have resulted in the decision being based on an erroneous finding of fact made without regard to all of the material before it.

[9] Similarly, the General Division identified that the Applicant suffered from asthma and diarrhea. It did not, however, consider the impact of these conditions on her capacity regularly to pursue any substantially gainful occupation. Again, this may have resulted in erroneous findings of fact made without regard to all of the material before it.

[10] Finally, in this regard, the decision refers to the Applicant's hands as "swollen and malformed" from arthritis. Despite this, the General Division concluded that the Applicant had transferrable skills in "office work," with no explanation how the arthritis impacted the

Applicant's ability to do this work. This may be another erroneous finding of fact made without regard to all of the evidence.

[11] Finally, the General Division may have erred in law. The *Bungay v. Canada (Attorney General)*, 2011 FCA 47 decision concluded that to determine whether a claimant is disabled under the *Canada Pension Plan*, a claimant's condition is to be assessed in its totality. All of the possible impairments are to be considered, not just the biggest impairments or the main impairment. Despite this statement in the decision it is not clear that the General Division considered all of the Applicant's conditions or their combined effect on her capacity to work. This may be an error of law, and it is a ground of appeal under the DESD Act that may have a reasonable chance of success on appeal.

[12] In *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal indicated that it is not necessary for the Appeal Division to address all the grounds of appeal an applicant raises. In that case, Dawson J.A. stated, in reference to subsection 58(2) of the DESD Act, that "[t]he provision does not require that individual grounds of appeal be dismissed." Because I found that some of the grounds of appeal have a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant has submitted. However, the parties are not restricted to the grounds of appeal referred to in this decision at the hearing of this appeal.

CONCLUSION

[13] The Application is granted.

[14] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division