



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. F. v. Minister of Employment and Social Development*, 2017 SSTADIS 607

Tribunal File Number: AD-17-655

BETWEEN:

S. F.

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: November 2, 2017

REASONS AND DECISION

INTRODUCTION

[1] On July 7, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on October 3, 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 subsection 58(1) of 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] The *Canada Pension Plan* states that a disability is severe if it renders a claimant incapable regularly of pursuing any substantially gainful occupation. This legal test was

correctly set out at the beginning of the General Division’s analysis. It is not clear, however, if this was the legal test applied by the General Division to reach the decision in this matter. At paragraph 75, the decision states that the Applicant was not “incapable of working at anything.” This may be different than being incapable regularly of pursuing any substantially gainful occupation. If the General Division applied the wrong legal test to decide whether the Applicant’s disability was severe, this would be an error of law. This is a ground of appeal that may have a reasonable chance of success on appeal.

[7] The Applicant also argues that the General Division decision was based on erroneous findings of fact, thereby offending subsection 58(1) of the DESD Act. Since I have found that another ground of appeal has a reasonable chance of success on appeal, I need not consider these arguments: *Mette v. Canada (Attorney General)*, 2016 FCA 276.

CONCLUSION

[8] The Application is granted. The parties are not restricted to arguing only the ground of appeal considered in this decision at the hearing of the appeal.

[9] 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