



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v. Minister of Employment and Social Development*, 2017 SSTADIS 642

Tribunal File Number: AD-17-199

BETWEEN:

L. M.

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 15, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applied for a Canada Pension Plan disability pension and claimed that she was disabled as a result of cardiac issues, right sided numbness, and an inability to manage physical tasks. On January 30, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant's disability was not severe under the *Canada Pension Plan*. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on March 6, 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 under the DESD Act are set out in subsection 58(1). They are that the General Division failed to observe the principles of natural justice, made an error of law or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it. Subsection 58(2) states that leave to appeal is to be refused if the appeal has no reasonable chance of success (see Appendix).

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

[5] The Applicant presents a number of grounds of appeal. She contends that the General Division failed to observe the principles of natural justice, erred in law, and failed to consider all of the evidence before making its decision.

[6] The Applicant argues that the General Division failed to observe the principles of natural justice because it did not consider her request to have the hearing in this matter held by videoconference. She argues that her representative requested that the hearing be held by videoconference as she did not have a telephone that worked reliably, and that it was important

that the Tribunal see the Applicant to properly assess her evidence. This matter was initially scheduled to be heard by teleconference on April 7, 2016. The hearing was adjourned three times at the Applicant's request. Each hearing date was scheduled for a teleconference hearing. The General Division decision sets out four reasons for holding the hearing by teleconference. It does not indicate, however, that the Applicant had requested another form of hearing or that this request and the reasons for it was considered. It is therefore not clear whether the General Division considered the Applicant's request for a videoconference hearing or whether the Applicant would be able to fully present her case by telephone. This ground of appeal points to a failure to observe the principles of natural justice and may have a reasonable chance of success on appeal.

[7] 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 DESDA that, "[t]he provision does not require that individual grounds of appeal be dismissed." Because I found that one ground of appeal has a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant has submitted.

CONCLUSION

[8] The Application is granted.

[9] The parties may make submissions on grounds of appeal not considered in this decision.

[10] The 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

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.