



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. F. v. Minister of Employment and Social Development*, 2017 SSTADIS 637

Tribunal File Number: AD-17-167

BETWEEN:

D. 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 14, 2017

REASONS AND DECISION

INTRODUCTION

[1] On November 17, 2016, 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 Tribunal's Appeal Division on February 21, 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 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 for the legislation).

[4] The Applicant advances two grounds of appeal: that the General Division erred in law by not considering the cumulative effect of all of his conditions and not conducting a real-world analysis (see *Bungay v. Canada (Attorney General)*, 2011 FCA 47; *Villani v. Canada (Attorney General)*, 2001 FCA 248), and that it failed to observe the principles of natural justice when it did not hold an oral hearing in this case.

[5] The General Division decision summarized all of the evidence that was before it including various medical reports. The decision acknowledges that the Applicant had developed numerous conditions since he stopped working, and concludes that they were mild at the relevant time. The decision does not appear to have considered the cumulative impact of all of the Applicant's conditions, including poor sleep, eating difficulties, chronic pain, and difficulty

with mood, anxiety and concentration, as well as his personal circumstances including work experience only in manufacturing and his limited formal education when it made its decision. This ground of appeal points to errors in law as the decision may not have applied the principles set out in *Villani* and *Bungay* in its analysis of the evidence. This ground of appeal has a reasonable chance of success on appeal.

[6] 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. Because I found that another ground of appeal has a reasonable chance of success, I have not considered the remaining ground of appeal.

CONCLUSION

[7] The Application is granted.

[8] The parties are not limited to the ground of appeal considered in this decision in their submissions for 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

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