



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. H. v. Minister of Employment and Social Development*, 2017 SSTADIS 641

Tribunal File Number: AD-17-168

BETWEEN:

H. H.

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] On December 2, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant did not suffer from a severe disability as that term is defined in the *Canada Pension Plan*. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on February 23, 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] Hence, I must decide whether the Applicant has presented a ground of appeal under section 58 of the DESD Act that has a reasonable chance of success on appeal.

[5] The Applicant presented a number of grounds of appeal. She submits that the General Division erred as it did not consider all of the Applicant's conditions, only whether she continued to suffer from a physical injury to her shoulder at the relevant time. The decision concludes that the Applicant suffered from this injury, but that it did not result in a severe disability as that term is defined in the *Canada Pension Plan*. In *Bungay v. Canada (Attorney General)*, 2011 FCA 47, the Federal Court of Appeal decided that all of a claimant's impairments are to be considered, not just the main or biggest one. I am satisfied that in this case the General Division may not have considered the effect of pain and medication on the

Applicant's capacity regularly to pursue any substantially gainful occupation. This would be an error of law. This ground of appeal has a reasonable chance of success on appeal.

[6] In addition, the Applicant argues that the General Division based its decision on an erroneous finding of fact made without regard to all of the material before it when it concluded that she had not taken appropriate steps to mitigate her circumstances as she had not attended a pain-management program. In paragraph 17, the decision states that the Applicant discussed attending a pain management program with her family doctor, but that together they decided that it would not be of much benefit to her. The General Division may not have considered this explanation for not attending the program when it reached its decision. Therefore, the decision may have been based, at least in part, on an erroneous finding of fact made without consideration of all of the material that was before the General Division. This ground of appeal also has a reasonable chance of success.

[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. Because I found that some grounds of appeal have a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant has submitted. The parties are not, however, restricted to only addressing the grounds of appeal considered in this decision.

CONCLUSION

[8] The Application is granted as the Applicant has presented grounds of appeal under section 58 of the DESD Act that have a reasonable chance of success on 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.