



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. T. v. Minister of Employment and Social Development*, 2017 SSTADIS 661

Tribunal File Number: AD-17-173

BETWEEN:

L. T.

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 17, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant claimed that she was disabled under the *Canada Pension Plan* as a result of physical and psychological injuries suffered in a motor vehicle accident in May 2011. The Respondent refused her application for a Canada Pension Plan disability pension initially and on reconsideration. She appealed. On January 27, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed her appeal. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on February 24, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs this Tribunal's operation. 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) of the DESD Act. 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] Consequently, I must 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 claims that the General Division based its decision on erroneous findings of fact made perversely, capriciously or without regard to all of the material that was before it, that it erred in law by not applying the principles set out in various court decisions, that it applied the wrong standard of proof and that it failed to observe the principles of natural justice.

[6] In particular, the Applicant argues that the General Division based its decision on a finding of fact made perversely, capriciously or without regard to all of the material that was

before it when it concluded that she had not exhausted all treatment options, as she had not attended a chronic pain clinic. The decision noted in its summary of the evidence that a referral to a pain clinic was pending. It also states in paragraph 25 that Dr. Harding reported in May 2016 that although the Applicant may achieve some benefit from attending this clinic, it was unlikely that this would result in her return to the workplace. It is not clear, when the General Division found that treatment options remained untried, whether it considered the unlikelihood of the Applicant's ability able to return to the workforce after attending a pain clinic. This ground of appeal points to the decision having been based on an erroneous finding of fact without regard to all of the material that was before the General Division. This ground of appeal has 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 that 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 one ground of appeal has a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant submits. The parties are not, however, restricted to argument only on the ground of appeal considered in this decision.

CONCLUSION

[8] The Application is granted.

[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.