



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. C. v. Minister of Employment and Social Development*, 2017 SSTADIS 666

Tribunal File Number: AD-16-1395

BETWEEN:

B. C.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Nancy Brooks

Date of Decision: November 20, 2017

REASONS AND DECISION

[1] The Applicant seeks leave to appeal the decision of the General Division of the Social Security Tribunal of Canada (Tribunal), dated October 31, 2016, which determined she was not entitled to a disability pension under the *Canada Pension Plan* (CPP).

[2] Pursuant to s. 58(1) of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds to appeal a decision of the General Division: first, committing a breach of natural justice or otherwise acting beyond or refusing to exercise jurisdiction; second, making an error in law; and third, basing the decision on an erroneous finding of fact made in a perverse and capricious manner or without regard to the material before it. The use of the word “only” in s. 58(1) means that no other grounds of appeal may be considered: *Belo-Alves v. Canada (Attorney General)*, [2015] 4 FCR 108, 2014 FC 1100, at para. 72.

[3] An appeal to the Tribunal’s Appeal Division may only be brought if leave to appeal is granted: DESDA, s. 56(1). According to s. 58(2) of the DESDA, leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. Therefore, the issue before me on this application is whether the Applicant’s appeal has a reasonable chance of success.

[4] The leave to appeal proceeding is a preliminary step to an appeal on the merits. It presents a different and appreciably lower hurdle to be met than the one that must be met at the appeal stage: at the leave to appeal stage, the Applicant is required to establish that the appeal has a reasonable chance of success on at least one of the grounds in s. 58(1) of the DESDA, whereas at the appeal stage, the Applicant must prove his or her case on the balance of probabilities: *Kerth v. Canada (Minister of Human Resources Development)*, 1999 CanLII 8630 (FC). In the context of an application for leave to appeal, having a reasonable chance of success means having some arguable ground upon which the proposed appeal might succeed: *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41.

[5] On this appeal, Applicant's counsel submits, among other things, that the General Division did not apply the correct legal test for severity because it failed to properly apply the principles set out by the Federal Court of Appeal in *Villani v. Canada (Attorney General)*, [2002] 1 FCR 130, 2001 FCA 248. In this regard, counsel asserts that the General Division failed to consider "the Applicant's 'real world' condition" because it did not consider the totality of the Applicant's condition as at the minimum qualifying period date of December 31, 2011.

[6] *Villani* laid down the principle that the question of whether an individual's disability is severe within the meaning of the CPP— i.e. whether he or she is incapable regularly of pursuing any substantially gainful occupation, by reason of his or her disability—must be considered in the context of the individual's particular circumstances (age, education level, language proficiency and past work and life experience, in addition to the totality of the individual's medical condition). It is not manifestly clear from the General Division decision whether the member adequately considered the factors identified in *Villani* and, consequently, whether she applied the correct legal test. Therefore, bearing in mind the lower threshold that needs to be met by the Applicant to be granted leave to appeal, I am satisfied that the Applicant has raised an arguable case with respect to a possible error of law falling within the scope of s. 58(1)(b) of the DESDA.

[7] Having found that there is an arguable case in this respect, at this point I need not consider any other grounds raised by the Applicant in her application. Subsection 58(2) of the DESDA does not require that individual grounds of appeal be considered and accepted or rejected at the leave to appeal stage: *Mette v. Canada (Attorney General)*, 2016 FCA 276. The Applicant is not restricted in her ability to pursue the various grounds raised in the leave application on the appeal on the merits.

DISPOSITION

[8] The application for leave to appeal is granted.

[9] In accordance with s. 58(5) of the DESDA, the application for leave to appeal hereby becomes the notice of appeal. Within 45 days after the date of this decision, the parties may file submissions with the Appeal Division or file a notice with the Appeal Division stating that they have no submissions to file: *Social Security Tribunal Regulations*, s. 42.

Nancy Brooks
Member, Appeal Division