



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 684

Tribunal File Number: AD-17-594

BETWEEN:

A. B.

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 27, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applied for a Canada Pension Plan disability pension and claimed that he was disabled by pain and physical limitations. On June 21, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Applicant did not have a severe disability under the *Canada Pension Plan*. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on September 29, 2017. On October 13, 2017, the Tribunal requested that the Applicant provide missing information regarding his reasons for requesting leave to appeal. The Applicant did not respond to this request.

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) 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.

[4] I must decide whether the Applicant has presented a ground of appeal under subsection 58(1) of the DESD Act that has a reasonable chance of success on appeal.

[5] In the Application, the Applicant wrote that he stopped working in 2013 due to back and leg pain, and that he was still unable to return to work. He also included a witness statement from his wife, and two medical letters to support his claim that he is disabled. This does not point to any error made by the General Division. It is not a ground of appeal that has a

reasonable chance of success. Also, the provision of new evidence is not a ground of appeal under the DESD Act.

[6] I also reviewed the written record and the General Division decision. The decision summarizes the medical evidence, including correspondence from the Applicant's family physician. Paragraph 28 of the decision states that Dr. McLaughlin did not preclude the Applicant from work other than what he had done previously. However, a letter from Dr. McLaughlin dated July 2016 (GD5) states that the Applicant is unable to return to any type of employment. This contradictory report is not referenced in the decision and it is not clear if the General Division considered it. The General Division decision may therefore have been based on an erroneous finding of fact made without regard to all of the material that was before it. This is a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

[7] The Application is granted for the reasons set out above.

[8] 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