Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *S. N. v. Minister of Employment and Social Development*, 2017 SSTADIS 734

Tribunal File Number: AD-17-428

BETWEEN:

S. N.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: December 14, 2017

Canada

DECISION AND REASONS

DECISION

Leave to appeal is refused.

OVERVIEW

[1] The Applicant, S. N., is 45 years old and has some training in accountancy. She was employed as a motel general manager until 2011, when symptoms associated with fibromyalgia and osteoarthritis led her to seek work better suited to her limitations. She then took short-lived jobs as a restaurant bookkeeper and as a technical support teleworker, but she said that she was unable to meet the demands of either position because of her health conditions.

[2] In September 2015, the Respondent, the Minister of Employment and Social Development (Minister), refused Ms. S. N.'s application for a disability pension under the *Canada Pension Plan* (CPP). The Minister acknowledged that she suffered from joint pain, among other medical conditions, but it found insufficient evidence that they prevented her from performing suitable work within her functional limitations during the minimum qualifying period (MQP), which ended on December 31, 2015.

[3] Ms. S. N. appealed the Minister's refusal to the General Division of the Social Security Tribunal of Canada (Tribunal). On February 20, 2017, it convened a hearing by teleconference but found that Ms. S. N. had not demonstrated a severe disability, noting that none of her treatment providers had barred her from working.

[4] Ms. S. N. has now requested leave to appeal from the Tribunal's Appeal Division, alleging that the General Division failed to consider medical evidence that her disability was severe. I have reviewed the General Division's decision against the underlying record and have concluded that Ms. S. N. has not advanced any grounds that would have a reasonable chance of success on appeal.

ISSUES

[5] According to section 58 of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material. An appeal may be brought only if the Appeal Division first grants leave to appeal,[1] but the Appeal Division must first be satisfied that it has a reasonable chance of success.[2] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[3]

[6] My task is to determine whether Ms. S. N. has an arguable case that the General Division ignored medical evidence that her disability was severe.

ANALYSIS

[7] Ms. S. N. submits that the General Division dismissed her appeal despite evidence indicating that her overall condition was "severe," according to the CPP criteria. She specifically alleges that the General Division disregarded medical opinions that described the impact of her health problems on her ability to work.

[8] I do not see a reasonable chance of success on this ground.

[9] It is settled law that an administrative tribunal charged with fact finding is presumed to have considered all the evidence before it and need not discuss each and every element of a party's submissions.[4] That said, I have reviewed the General Division's decision and have found no indication that it ignored, or gave inadequate consideration to, any significant item of evidence. The General Division's decision contains what appears to be a fairly thorough summary of Ms. S. N.'s medical file, followed by an analysis that meaningfully discussed the documentary and oral evidence.

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[1] DESDA at subsections 56(1) and 58(3).
[2] *Ibid*. at subsection 58(1).
[3] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.
[4] *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

[10] Ms. S. N.'s representative argued that the General Division ignored a significant component of Dr. Pollock's November 2014 CPP medical report, which noted "severe fatigue, spends >14 hrs per day sleeping/resting" and "overwhelming anxiety, difficulty leaving the house most days." Ms. S. N.'s representative also criticized the General Division for giving insufficient weight to Dr. Wertlen's August 2015 progress note, which remarked that the Applicant was "unable to walk/bear weight on L leg."

[11] I have reviewed Dr. Pollock's report[5] and note that the highlighted passages are not medical opinions but Ms. S. N.'s subjective descriptions of her symptoms, relayed to, and recorded by, her treatment provider. They are not the product of objective testing or even dispassionate observation, and the General Division cannot be faulted if it chose to give them lesser weight than Dr. Pollock's diagnoses and prognoses, listed elsewhere on the form. In any case, the General Division was well aware of Ms. S. N.'s claims that she is extremely anxious and spends more than 14 hours per day in bed, as it referred to her testimony to that effect in paragraph 21 of its decision.

[12] As for Dr. Wertlen's note,[6] it appears to document an objective finding about Ms. S. N.'s mobility that might affect her ability to work, but it is rare that a single report can be considered determinative, and the General Division was also obliged to consider competing evidence, some of which indicated residual capacity. While Ms. S. N. may not agree with the General Division's conclusions, it is open to an administrative tribunal to sift through the relevant evidence, decide on its weight, and determine what, if any, it chooses to accept or disregard.

[13] In the end, Ms. S. N.'s submissions amount to a recapitulation of evidence and argument that were already presented to the General Division. She has not identified how, in coming to its decision, the General Division failed to observe a principle of natural justice, committed an error of law or relied on an erroneous finding of fact. My review of its decision indicates that the General Division analyzed in detail Ms. S. N.'s claimed medical conditions—including chronic pain and anxiety—and whether they affected her capacity to regularly pursue substantially gainful employment during the MQP. In doing so, it took into account her

[5] Found at GD2-54.
[6] GD3-8.

background—including her age, education and work experience—but found that they were not significant impediments to her ability to retrain or perform alternate work. The General Division put forth defensible reasons for preferring certain items of evidence over others, and I do not see an arguable case that it disregarded material evidence.

[14] In the absence of a specific allegation of error, I find this claimed ground of appeal to be so broad as to amount to a request to retry the entire claim. If Ms. S. N. is asking me to reassess the evidence and substitute my judgment for the General Division's, I am unable to do so. My authority as an Appeal Division member permits me to determine only whether any of an applicant's reasons for appealing fall within the specified grounds under subsection 58(1) and whether any of them have a reasonable chance of success.

CONCLUSION

[15] Since Ms. S. N. has not identified any grounds of appeal under subsection 58(1) of the DESDA that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.

Member, Appeal Division