



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 723

Tribunal File Number: AD-17-292

BETWEEN:

D. P.

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: December 11, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant worked in a supervisory capacity at a casino until she was involved in a car accident in 2011. She continues to suffer from a number of conditions as a result of this accident, including post-traumatic stress disorder, depression, acquired brain injury, migraine headaches and a soft-tissue neck injury. In 2014, the Applicant applied for a Canada Pension Plan disability pension based on these conditions. The Respondent refused the application initially and on reconsideration. The Applicant appealed the reconsideration decision to this Tribunal. On January 9, 2017, the Tribunal's General Division decided that the Applicant was not disabled. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on April 5, 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 a principle 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 for 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] Consequently, I must decide whether the Applicant has presented a ground of appeal that has a reasonable chance of success on appeal.

[5] The Applicant contends that the General Division decision was based on a number of erroneous findings of fact made in a perverse or capricious manner or without regard for the material that was before it. First, she argues that the General Division erred when it stated in paragraph 9 of the decision that the Applicant had not provided any information regarding her

injuries or medical conditions, or limitations in her activities of daily living, and that she had relied on her doctor's report to provide this information. While this is what the Applicant had written in her disability questionnaire, the Applicant's counsel also filed a lengthy and detailed written submission that set out this information (see GD6, paragraphs 7 to 10, for example). The decision does not reference these submissions so it is not clear whether it considered them in making its decision.

[6] The Applicant also submits that the General Division based its decision on an erroneous finding of fact as it stated in paragraph 41(d), "The appellant was involved in an MVA in May 2011; however, she continued to work in a modified capacity until January 2014." In fact, the Applicant provided written evidence that she stopped working after the accident in 2011, but made a number of attempts to return to work in 2011, 2012, 2013 and 2014, which were unsuccessful. She did not work continuously during this three-year period. This finding of fact may have been made erroneously without regard for all of the evidence that was before the General Division, including specific evidence regarding her attempts to return to work.

[7] Hence, I am satisfied that the Applicant has presented grounds of appeal under subsection 58(1) of the DESD Act that have a reasonable chance of success on appeal.

[8] 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.

[9] The parties are not limited to the grounds of appeal considered in this decision at the hearing of the appeal.

CONCLUSION

[10] The Application is granted.

Valerie Hazlett Parker
Member, Appeal Division