



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. V. v. Minister of Employment and Social Development*, 2017 SSTADIS 755

Tribunal File Number: AD-17-287

BETWEEN:

**B. V.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: December 20, 2017

## REASONS AND DECISION

### DECISION

[1] The Application for leave to appeal is granted.

### OVERVIEW

[2] The Applicant completed some high school education and obtained a Red Seal in painting and decorating, and a certificate in heavy equipment operation. He worked in painting and associated jobs. He applied for a Canada Pension Plan disability pension and claimed that he was disabled by seizures and related problems, poor balance, and hearing loss. The Respondent refused the application initially and on reconsideration. The Applicant appealed the reconsideration decision to this Tribunal. On January 6, 2017, the Tribunal's General Division decided that the Applicant was not disabled under the *Canada Pension Plan*. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on April 3, 2017.

### ANALYSIS

[3] 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.

[4] The only grounds of appeal available under the DESD Act are set out in subsection 58(1), namely, 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.

[5] The Applicant argues that the General Division based its decision on two erroneous findings of fact made in a perverse or capricious manner. I must decide whether he has presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

[6] The Applicant contends that the General Division erred when it found as fact that the Applicant's self-employed work after 2009 was significant because it had been reported in the disability questionnaire that he filed with the Tribunal. He argues that this work was not significant, but was reported because the questionnaire requires that all work be reported and contains a warning about not doing so.

[7] It is not disputed that the Applicant earned at most a nominal income from this work. There is very little additional evidence about it, except the Applicant's testimony that he did very little work, and that his brother helped him finish the last job he took on. It is not clear whether the General Division considered this evidence when it found as fact that the work was significant. The decision was based in part on this finding of fact. I am satisfied that this finding of fact may have been made erroneously under subsection 58(1) of the DESD Act. This ground of appeal may 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 one ground of appeal may have a reasonable chance of success, I have not considered the remaining ground of appeal that the Applicant submitted.

[9] The parties are not restricted to the ground of appeal considered in this decision.

[10] 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