



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. F. v. Minister of Employment and Social Development*, 2017 SSTADIS 749

Tribunal File Number: AD-17-268

BETWEEN:

B. F.

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 19, 2017

REASONS AND DECISION

DECISION

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

OVERVIEW

[2] The Applicant did not complete high school, but obtained a Grade 12 diploma as a mature student. He has no computer skills. He has worked in physically demanding jobs, and last worked as a letter carrier until July 2011. The Applicant applied for a Canada Pension Plan disability pension and claimed that he was disabled as a result of a torn muscle in his thigh, chronic low back pain, and associated symptoms. The Respondent refused the application initially and on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On February 1, 2017, the Tribunal's General Division determined that a disability pension under the *Canada Pension Plan* was not payable. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on March 27, 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 presents a number of grounds of appeal and argues that the General Division erred in law and based its decision on erroneous findings of fact made perversely,

capriciously or without regard for the material that was before it. I must decide whether any ground of appeal has a reasonable chance of success on appeal.

[6] Specifically, the Applicant argues that the General Division erred in law when it concluded that the Applicant's capacity to work for 16 hours each week (which the Applicant disputes) would be a substantially gainful occupation. The General Division provided no reasons for its conclusion that, in this case, working 16 hours each week would be a "substantially gainful occupation," as that term has been defined by relevant case law (see, for example, *Atkinson v. Canada (Attorney General)*, 2014 FCA 187). It also did not set out an evidentiary basis for this conclusion. I am satisfied that this argument points to an error of law in the General Division decision and is a ground of appeal that has a reasonable chance of success on appeal.

[7] 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 has a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant has submitted.

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

[9] 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