

Citation: *P. L. v. Minister of Employment and Social Development*, 2015 SSTAD 1222

Date: October 16, 2015

File number: AD-15-951

APPEAL DIVISION

Between:

P. L.

Appellant

and

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills Development)**

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

Decided on the record on October 16, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* retirement pension on May 18, 2012. The Respondent approved the application and began to pay the retirement pension to him as of June 2011. The Respondent asked for reconsideration of this decision, and requested further retroactive payment of the pension. This request was denied by the Respondent. The Appellant appealed the reconsideration decision to the General Division of the Social Security Tribunal. The General Division summarily dismissed the appeal on August 10, 2015.

[2] The Appellant appealed the General Division decision to the Appeal Division of the Tribunal. It was not necessary for the Applicant to first obtain leave to appeal to the Appeal Division as subsection 53(3) of the *Department of Employment and Social Development Act* provides for an appeal as of right from a decision of the General Division that summarily dismissed the claim. The Appellant argued that his entitlement to further retroactivity should not be taken away as other government programs allow for limited relief based on individual circumstances.

[3] The Respondent argued that the General Division decision contained no errors of fact or law and should stand.

[4] This appeal proceeded on the basis of the written record after considering the following:

- a) The complexity of the issue under appeal;
- b) The fact that the credibility of the parties was not a prevailing issue; and
- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

STANDARD OF REVIEW

[5] The Appellant made no submissions regarding what standard of review should be applied in this case. The Respondent argued that because this matter involved a question of

mixed law and fact, the standard of review to be applied is that of reasonableness. The leading case on this is *Dunsmuir v. New Brunswick* 2008 SCC 9. In that case, the Supreme Court of Canada concluded that when reviewing a decision on questions of fact, mixed law and fact, and questions of law related to the tribunal's own statute, the standard of review is reasonableness; that is, whether the decision of the tribunal is within the range of possible, acceptable outcomes which are defensible on the facts and the law. The correctness standard of review is to be applied to questions of jurisdiction, and questions of law that are of importance to the legal system as a whole and outside the adjudicator's specialized area of expertise.

[6] As this appeal involves the application of the law to the facts it is a matter of mixed fact and law. As such the standard of review to be applied is that of reasonableness. I must therefore decide if the General Division decision was reasonable.

ANALYSIS

[7] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. It sets out the only grounds of appeal that can be considered by the Appeal Division and what remedies it can give in sections 58 and 59. These are reproduced in the Appendix to this decision.

[8] I am satisfied that the General Division decision correctly set out the legal test to be met to summarily dismiss a claim, and the law with respect to retroactive payment of a *Canada Pension Plan* retirement pension. This appeal cannot succeed on the basis that the General Division erred in law.

[9] Similarly, the facts before the General Division were not in dispute. The Appellant applied for a *Canada Pension Plan* retirement pension in May 2012, when he was 67 years of age. The Respondent approved the application, and started paying the pension to him as of June 2011, eleven months prior to when the application was received. The appeal cannot succeed on the basis that the General Division made an error in fact.

[10] The Appellant did not suggest that the principles of natural justice were not observed in this matter. This appeal cannot succeed on the basis of this ground of appeal.

[11] The Appellant argued that his entitlement to further retroactivity to when he turned 65 should not be taken away as other government programs allow for relief based on individual circumstances. While this may be so, it is not the case with the *Canada Pension Plan*. The General Division decision set out the law correctly. Section 67 of the Plan states clearly the maximum retroactivity that can be granted to any applicant for a retirement pension. This was done as in this case the earliest that the retirement pension payments could begin was eleven months prior to when the Appellant's application was received by the Respondent. The *Canada Pension Plan* does not permit any relief to be granted based on individual or extenuating circumstances.

[12] The General Division decision also correctly stated that the *Department of Employment and Social Development Act* also does not permit this Tribunal to grant relief on compassionate grounds or because of individual circumstances.

[13] I have great sympathy for the Appellant's circumstances. I am not, however, able to grant him any relief.

CONCLUSION

[14] The appeal is dismissed for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) The only grounds of appeal are that

- (a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

58. (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

59. (1) The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.