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

Citation: ***P. C. v. Minister of Employment and Social Development*****, 2016 SSTADIS 17**

Date: January 12, 2016

File number: AD-15-1106

APPEAL DIVISION

Between:

P. C.

Applicant

and

Minister of Employment and Social Development

Respondent

and

S. C.

Added Party

Summary Dismissal Appeal

Decision by: Hazelyn Ross, Member, Appeal Division

DECISION

[1] The Appeal is dismissed.

INTRODUCTION

[2] This is an appeal from a decision of the General Division of the Social Security Tribunal of Canada (the Tribunal) to summarily dismiss the Appellant's appeal because it had no reasonable chance of success.

[3] The Appellant applied for a Disabled Contributor's Child Benefit under the *Canada Pension Plan,* (CPP), in respect of the Added Party. The Respondent received the application in March 2008. (GT1-32) The Respondent approved the application and indicated that payment of the benefit would be retroactive to the eleven months immediately preceding the month the application was received. In practical terms payment of the benefit would commence effective April 2007.

[4] The Appellant asked the Respondent to reconsider its decision to limit the period of retroactivity to eleven months. However, the Respondent maintained its original decision, explaining that it was limited to the date the application for the benefit was made. (GT1-08) The Appellant appealed the reconsideration decision and on September 16, 2015 the General Division of the Social Security Tribunal of Canada, (the Tribunal), having served notice on the Appellant of its intention to do so, summarily dismissed her appeal.

ISSUE

[5] The following issue arises for determination by the Appeal Division of the Tribunal: In choosing to summarily dismiss the appeal did the General Division err in law or otherwise breach subsection 58(1) of the *Department of Employment and Social Development (DESD) Act*?

[6] The determination of this question necessarily involves an anterior determination of the jurisdiction of the General Division with respect to varying the date that commencement of payment of the Disabled Contributor's Child Benefit.

APPLICABLE LAW

[7] The CPP allows for payment of a benefit to children of disabled contributors. Paragraph 44 (e) provides,

> e) a disabled contributor's child benefit shall be paid to each child of a disabled contributor who
>
> (i) has made contributions for not less than the minimum qualifying period,
>
> (ii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if an application for a disability pension was actually received, or
>
> (iii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if a division of unadjusted pensionable earnings that was made under section 55 or 55.1 had not been made.

[8] The commencement of the benefit is governed by CPP section 74, which provides at paragraph (2),

> *Commencement of payment of benefit* – Subject to section 62, where payment of a disabled contributor's child benefit or orphan's benefit in respect of a contributor is approved, the benefit is payable for each month commencing with,
>
> (a) In the case of a disabled contributor's child's benefit, the later of
>
> (i) the month with which a disability pension is payable to the contributor, and
>
> (ii) the month after the month in which the child was born or otherwise became a child of the contributor,
>
> but in no case earlier than the twelfth month preceding the month following the month in which the application was received.

[9] Thus, section 74 effectively limits the period of retroactive payment to eleven months prior to the month the application for the disabled contributor's child benefit was actually received.

[10] The CPP also has rules with regard to the payment of benefits and the making of applications for benefits. The CPP provides that a person must actually apply in order to receive a benefit. Thus, the following provision is found at section 60 of the CPP,

> *Application for benefit (1)* - No benefit is payable to any person under this Act unless an application therefor has been made by him or on his behalf and payment of the benefit has been approved under this Act.

THE FACTS

[11] The Applicant stated that the Added Party has been under her effective care and control since she was a very young child. The Applicant applied for a CPP disability pension in January 2001. At that time she did not include the Added Party as part of her application. It was not until March 2008 that the Applicant sought to obtain disabled contributor's child benefits for the Added Party. The Applicant stated that she was unaware that she could make the application until shortly before she actually did.

SUBMISSIONS

[12] Counsel for the Respondent has submitted that the General Division properly dismissed the Appeal. She stated that the General Division Member cited the correct legal test for summary dismissal under section 53 of the DESD Act and also cited the correct provisions of the CPP which "govern application for the disabled contributor's child benefit and the maximum retroactivity of payment of the benefit." (AD2-7) In the submission of the Respondent the General Division decision contains no reviewable error. Accordingly, the appeal should be dismissed.

[13] The Appellant submitted a number of documents that included medical and school records that show her longstanding involvement with the care and upbringing of the Added Party. The Appellant maintains her position that the period of retroactivity ought to be greater than the eleven months that was provided.

ANALYSIS

[14] The test on a summary dismissal of an appeal is that the "appeal has no reasonable chance of success." The language of the applicable provision is in mandatory terms: the General Division must summarily dismiss an appeal if it is satisfied that it (the appeal) has no reasonable chance of success." The question is, of course, how does a decision-maker decide what amounts to a reasonable chance of success?

[15] The Appeal Division must also decide how it will approach appeals of General Division decisions, namely, whether a standard of review analysis is required. Recent decisions of the

Federal Court of Appeal and the Federal Court indicate that this is, likely, not required and that the Appeal Division ought to confine its inquiry to an assessment of whether or not the General Division breached any of the provisions of section 58(1) of the DESD Act.

[16] In *Canada (Attorney General) v. Paradis; Canada (Attorney General) v. Jean,* 2015 CAF 242 (CanLII), 2015 FCA 242, the Federal Court of Appeal drew a distinction between appeals heard pursuant to the transitional provisions of the *Jobs, Growth and Long-term Prosperity Act*, S.C. 2012, c. 19, ss. 266-267,and appeals from decisions rendered by the General Division of the Tribunal. The Federal Court of Appeal took the position that when the Appeal Division hears appeals under section 58 (1) of the DESD Act, the governing statute of the Tribunal, it needs must confine itself to the mandate provided by sections 55 to 69 of the Act.

> [19]… Where it hears appeals pursuant to subsection 58(1) of the *Department of Employment and Social Development Act,* the mandate of the Appeal Division is conferred to it by sections 55 to 69 of that Act. In particular, it must determine whether the General Division "erred in law in making its decision, whether or not the error appears on the face of the record" (paragraph 58(1)(b) of the *Act).* There is no need to add to this wording the case law that has developed on judicial review.

[17] The Federal Court of Appeal returned to the question in *Maunder v. Canada (Attorney General),* 2015 FCA 274, affirming the position it set out in *Jean Paradis.* In *Tracey v. Canada (Attorney General)* 2015 FC 1300 the Federal Court addressed the question in the context of applications for leave to appeal decisions of the General Division. As with the prior Federal Court of Appeal decisions, the Federal Court observed that the scope of the Appeal Division's jurisdiction when determining whether to grant leave to appeal has now been codified and set out in the DESD Act. Roussel. J. wrote:

> "in contrast with the former scheme which was grounded in common law through jurisprudence, the test to be applied by the SST-AD when determining leave to appeal is now set out in subsection 58(2) of the DESDA. Leave to appeal is refused if the SST-AD is satisfied that the appeal has no reasonable chance of success."

[18] Applying *Jean, Maunder and Tracey,* the Appeal Division must determine whether or not the General Division decision to summarily dismiss the Appellant's appeal demonstrates an error that would bring it within the grounds of appeal set out in section 58(1) of the DESD Act.

For the reasons set out below, the Appeal Division finds that no error arises from the decision to summarily dismiss the appeal.

[19] The main question that arises for determination is whether the General Division erred when it decided to summarily dismiss the Appellant's appeal. Having examined the circumstances of the case and the governing law, the Appeal Division finds no error on the part of the General Division.

The Jurisdiction of the General Division

[20] The CPP limits retroactive payment of the disabled contributor's child benefit to eleven months prior to month that the application was received. The Appellant wishes to have a greater retroactivity of payment. However, this is not simply a question of addressing the amount the Added Party received after she became of age, as suggested by the Appellant.

[21] The issue is one of jurisdiction. The Tribunal is created by statute. As such, it can exercise only that power granted by its enabling statute; a position that was made clear by the Supreme Court of Canada in *R. v. Conway*, 2010 SCC 22. In *Conway* [1] the S.C.C. made it clear that a tribunal can grant only such remedies as it is empowered by its enabling statute to provide. Abella, J., writing for the S.C.C. , after finding that the Ontario Review Board, ("the Board"), was a court of competent jurisdiction for the purposes of granting remedies under Section 24 of the *Canadian Charter of Rights and Freedoms* denied Mr. Conway the remedies he was seeking. Abella, J. concluded,

> [101] " A finding that the Board is entitled to grant Mr. Conway an absolute discharge despite its conclusion that he is a significant threat to public safety, or to direct CAMH to provide him with a particular treatment, would be a clear contradiction of Parliament's intent. Given the statutory scheme and the constitutional considerations, the Board cannot grant these remedies to Mr. Conway."

[22] Section 74 of the CPP limits the period of retroactivity to eleven months from the date the application for a disabled contributor's child benefit was made and the General Division, indeed the Tribunal, does not have jurisdiction to go outside of the statute and to give an appellant a greater back payment, regardless of how deserving an appellant. The General

[1] *R. v. Conway*, 2010 SCC 22

Division could not make an exception for the Appellant. That this is so is made clear by the decision in *Conway*.

Did the General Division properly dismiss the appeal?

[23] In recent decisions, Members of the Appeal Division have articulated the test for summary dismissal as "whether it is plain and obvious on the face of the record that an appeal is bound to fail." *M.C. v. Canada Employment Commission*, 2015 SSTAD 237.

[24] The Appeal Division is of the view that in situations where the facts are not in dispute; the applicable law is clear; and where on the undisputed facts the law supports one clear decision that is not in an appellant's favour then this would a situation where the appeal would have no reasonable chance of success. In such a case, it would be "plain and obvious" that the appeal was bound to fail and therefore, it would also be appropriate for the General Division to dismiss the appeal summarily. This is also the positon that was taken by Counsel for the Respondent in her submissions.

[25] The Appeal Division finds that this is such a case. While the Added Party may have been under the Appellant's care and control since she was a very young child, the fact is that the Appellant did not include her in her application for a CPP disability pension when she made that application in January 2001. It was not until March 2008 that the Appellant applied to include the Added Party as a disabled contributor's child. Even though the omission may have been inadvertent, the statutory scheme, specifically section 74 of the CPP, prevents an award greater than eleven months prior to the date of the original application for the disability pension. Thus, it was "plain and obvious" that the appeal could not succeed. Therefore, the General Division properly invoked section 53 of the DESD Act to dismiss the appeal summarily.

CONCLUSION

[26] The Appeal is dismissed.

Hazelyn Ross
Member, Appeal Division