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

Citation: *Minister of Employment and Social Development v. C. G.,* 2017 SSTADIS 109

Tribunal File Number: AD-16-1073

BETWEEN:

Minister of Employment and Social Development

Applicant

and

C. G.

Respondent

and

M. G.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: March 21, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated June 2, 2016, which determined that the Respondent was in full-time attendance at a school from May 26, 2014 to August 1, 2014, and that he was therefore entitled to a disabled contributor's child's benefit for this period. The Applicant alleges that the General Division acted beyond its jurisdiction in coming to this determination.

ISSUE

[2] Does the appeal have a reasonable chance of success?

FACTUAL BACKGROUND

[3] The Applicant notes that the Respondent submitted a Declaration of Attendance at School or University, in which he declared that he was in full-time attendance at school from March 17, 2014 to May 23, 2014. The Declaration was made in support of an application for a disabled contributor's child's benefit.

[4] On April 30, 2014, the Applicant denied the application for a disabled contributor's child's benefit, having determined that the Respondent did not meet the minimum requirements for attendance at school (GD1-12 to 13).

[5] On May 26, 2014, the Respondent commenced another 10-week apprenticeship training program, at another college. He submitted a second Declaration of Attendance at School, for the period from May 26, 2014 to August 1, 2014 (GD1-8 to 9 and GD1-10 to 11). He also sought a reconsideration of the Applicant's decision of April 30, 2014.

[6] On July 25, 2014, the Applicant sent two separate letters to the Respondent. The Applicant denied the Respondent's request for a reconsideration of his application for a child's benefit for the period from March 17, 2014 to May 23, 2014, on the basis that the

Respondent's apprenticeship program did not qualify as full-time attendance in a school under the legislation (GD1-19 to 20).

[7] The second letter dated July 25, 2014, indicates that the review was for the period from May 26, 2014 to August 1, 2014. The Applicant denied the Respondent's application for a child's benefit for this period, as it did not consider that his apprenticeship program constituted full-time attendance in school under section 66 of the *Canada Pension Plan Regulations.* The letter also informed the Respondent that he could request a reconsideration within 90 days from the date that he received the letter (GD1-21 to 22). There is no evidence before me that the Respondent sought a reconsideration of this decision.

[8] The Respondent filed a Notice of Appeal with the General Division, arguing that he met all of the requirements for a disabled contributor's child's benefit. He submitted that he had attended 20 weeks of school full-time, surpassing the minimum 12 weeks required within a 15-week timeframe, set out by the Applicant. He also argued that his apprenticeship training fell within the definition of schooling, under section 66 of the *Canada Pension Plan Regulations.*

[9] The General Division gave a broad and liberal interpretation to the expression "full-time attendance." The member decided that the duration of a program ought not to be the overriding or determinative factor in determining whether it constituted "full-time attendance." The member accorded significant weight to the fact that the Respondent had attended 35 hours a week over the duration of the program from May 26, 2014 to August 1, 2014. Despite the Applicant's letters of July 25, 2014, the member did not directly address the issue of whether the nature of the program qualified as schooling, under section 66 of the *Canada Pension Plan Regulations.*

ANALYSIS

[10] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

(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.

[11] Before granting leave, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[12] The Applicant submits that, at the same time that the General Division exceeded its jurisdiction, it also refused to exercise its jurisdiction. The Applicant further submits that the General Division erred in law and based its decision on an erroneous finding of fact. The Applicant contends that the General Division was required to determine whether the Respondent was in full-time attendance at school for the period from March 17, 2014 to May 23, 2014, and that, by failing to consider this issue, it had refused to exercise its jurisdiction. Further, by determining that the Respondent was in full-time attendance at school for the period from May 26, 2014 to August 1, 2014, the General Division had exceeded its jurisdiction. The Applicant asserts that this later period of study was not appealable to the General Division and that it therefore lacked any jurisdiction. The Applicant argues that these constitute errors of law and erroneous findings of fact on the part of the General Division.

[13] The Applicant does not challenge what might be construed as an implicit finding that the apprenticeship training qualified as schooling for the purposes of section 66 of the *Canada Pension Plan Regulations.*

[14] Clearly, the Applicant considered the two Declarations as two separate applications covering two discrete periods: (1) March 17, 2014 to May 23, 2014 and (2) May 26, 2014 to August 1, 2014. It had, after all, issued two separate letters on July 25, 2014, addressing each declaration separately. On the other hand, the Respondent was and remains of the position that, if his attendance in the apprenticeship training from March 17, 2014 to May 23, 2014 did not meet the minimum requirements for attendance at school, he can rely on his subsequent attendance— albeit at another institution— from May 26, 2014 to August 1, 2014, as this would then certainly carry him over the threshold of 12 weeks within a 15-week timeframe referred to by the Applicant.

[15] Under section 82 of the *Canada Pension Plan*, a party who is dissatisfied with the decision of the Applicant, made under section 81 of the *Canada Pension Plan*, may appeal the decision to the Tribunal. Section 81 of the *Canada Pension Plan* deals with reconsideration decisions made by the Applicant.

[16] The Applicant's reconsideration decision (GD1-19 to 20) clearly referenced and dealt exclusively with the period from March 17, 2014 to May 23, 2014. Yet, it appears that the General Division did not address this timeframe in its analysis, focusing solely on the timeframe from May 26, 2014 to August 1, 2014. In this regard, there is an arguable case that the General Division may have refused to fully exercise its jurisdiction, or may have erred in law, in seemingly failing to address whether the Respondent was in full- time attendance at school between March 17, 2014 and May 23, 2014. At the same time, it does not appear as if the Respondent sought a reconsideration of the Applicant's decision of July 25, 2014, in respect of its review of the Respondent's attendance at school from May 26, 2014 to August 1, 2014. Accordingly, there is an arguable case that the General Division may have exceeded its jurisdiction in determining whether the Respondent was in full-time attendance at a school from May 26, 2014 to August 1, 2014. I am satisfied that the appeal has a reasonable chance of success on these grounds and am therefore prepared to grant leave to appeal.

CONCLUSION

[17] The application for leave to appeal is granted. This decision granting leave to appeal does not, in any way, prejudge the result of the appeal on the merits of the case.

Janet Lew
Member, Appeal Division