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

Citation: *A. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 550

Tribunal File Number: AD-17-28

BETWEEN:

A. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: October 24, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the General Division decision dated December 22, 2016, which determined that the Applicant had been in full-time attendance in school for only May and June 2015 and that he was therefore entitled to payment of a disabled contributor's child's benefit (DCCB) for May, June and July 2015. The Applicant claims that he is entitled to a longer period of benefits because he was in school before May 2015 and because he remained in school after June 2015. In this regard, the Applicant argues that the General Division based its decision on erroneous findings of fact that it had made in a perverse or capricious manner or without regard for the material before it.

ISSUE

[2] Does the appeal have a reasonable chance of success on the issue of whether the Applicant 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?

ANALYSIS

[3] 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.

[4] Before granting leave to appeal, 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.

[5] The Applicant argues that the General Division overlooked or disregarded the following facts, that:

- he will remain a student or an apprentice in training until 2017, but lacks even the basic necessary tools for his trade. He questions whether he will be able to complete his studies without the DCCB being extended after July 2015; and

- he requires financial assistance. He remains financially dependent upon his father, but his father is 65 years old, disabled and unable to fully support him.

[6] The General Division set out this evidence at paragraph 15. The General Division also noted at paragraph 20 of its decision that the Applicant had stated that he had "full classes twice a year" with each period lasting for over two months and that, for the remainder of the calendar year, he had "full training classes with experience [*sic*] carpenters in different establishments."

[7] The General Division noted that the Applicant had provided it with a copy of his Apprentice Registration Card from the Industry Training Authority. The card had been issued in February 2014 and had been signed by a sponsor and by the Chief Executive Officer of the ITA. The card certified that the Applicant was a registered apprentice in accordance with the provisions of the *Industry Training Authority Act* (ITAA) in the occupation or trade of carpenter (see page GD9-2).

Financial need

[8] There are no provisions under the *Canada Pension Plan* or the Regulations thereto that confer any jurisdiction on the General Division (or the Appeal Division for that matter) to consider any extenuating factors, such as the Applicant's pressing financial needs. Sections 74 and 76 of the *Canada Pension Plan* stipulate when payment of the benefit

commences and when it ceases to be payable. There are no provisions under either of these two sections that allows for an extension of the payment period on the basis of financial need.

Full-time student

[9] The Applicant argues that the General Division ignored the fact that he remains a student. In fact, the General Division recognized this as the central issue before it, and it examined whether the Applicant was in full-time attendance at school or university after October 2014, such that he would be eligible to receive the DCCB.

[10] The General Division noted that the *Canada Pension Plan Regulations* (Regulations) require that an applicant provide a "declaration signed by a responsible officer of the institution, certifying to such enrolment" as well as a "declaration of such attendance signed by the child." The General Division noted at paragraph 18 that the Applicant's declaration of attendance had been missing from the appeal file and that it therefore had requested copies from the parties. The General Division did not specifically request copies of any "declaration[s] signed by a responsible officer of the institution, certifying to such enrolment."

[11] The Respondent indicated that the only declaration on record was the one that it had received for the period from January to June 2014. It provided a copy of a "screen shot" of the Service Canada file, which indicated that the Applicant had been enrolled in a recognized institution beginning in May 2015 and ending in June 2015.

[12] The General Division accepted the declaration of attendance and that the Applicant had been in full-time attendance at school in May and June 2015. However, it did not accept that the Applicant's training constituted full-time attendance at a school or university. The signed Apprentice Training Card was clearly insufficient for the General Division. After all, the card did not certify the Applicant's enrolment in a course requiring full-time attendance at a school or university. The General Division found that the Applicant had not met the requirements under subsection 67(a) of the Regulations, in that he had failed to file a

"declaration signed by a responsible officer of the institution, certifying to such enrolment" evidencing full-time attendance at a school or university.

[13] Furthermore, the General Division found that the Applicant's training did not qualify as a "school, college, university or other educational institution" as required by subsection 66(1) of the Regulations.

[14] Subsection 66(1) of the Regulations states:

> **Full-Time Attendance at a School or University**
>
> **66 (1)** For the purpose of paragraph (b) of the definition ***dependent child*** in subsection 42(1) of the Act, ***full-time attendance at a school or university*** means full-time attendance at a school, college, university or other educational institution that provides training or instruction of an educational, professional, vocational or technical nature and a dependent child shall be deemed to be or to have been in full-time attendance at a school or university during an absence by reason of a normal period of scholastic vacation.

[15] As noted above, the Apprentice Registration Card (GD9-2) certified that the Applicant was a registered apprentice in accordance with the provisions of the ITAA. Section 2.1 of the ITAA sets out the purposes of the industry training authority. One of the purposes is to manage and support an industry training and apprenticeship program in British Columbia, as well as to promote industry training programs, including by encouraging employers and individuals to participate in those programs. Under section of the ITAA, the authority may designate a training program, including a training program for a trade or an occupation, as a recognized program. It may well be that the Applicant had been enrolled in a training program, but there was very limited evidence of this before the General Division.

[16] The Applicant indicated that he was in training classes, although otherwise there was no information about the nature of this training, such as whether it was a recognized or accredited program, whether the training might have been offered in conjunction with the Applicant's formal schooling, when the training commenced and was scheduled to conclude

and, more importantly, whether the training took place at a school, college, university or other educational institution.

[17] Apart from the limited information before it, without having made any further enquiries or requests for supporting documentation, it is not immediately apparent why the General Division determined that the Applicant's attendance in "training classes" could not necessarily qualify as full-time attendance at a school or university, though this is not to suggest that the Applicant would have thereby met the requirements under section 67 of the Regulations. However, simply because the Applicant provided confirmation that he has been a registered apprentice since February 2014 is not conclusive evidence that he has been enrolled in a training program since then (apart from the time when he was attending school at the British Columbia Institute of Technology). Indeed, the Applicant's letter of October 14, 2016 indicates that he started his apprenticeship as a carpenter in September 2014 (GD9-1), although he had had the Apprentice Registration Card for several months before then. This issue, however, is moot before me, given the factual circumstances of this case. As the General Division determined, the Applicant had failed to fully comply with the provisions of the Regulations, in that he had failed to provide a "declaration signed by a responsible officer of the institution, certifying to such enrolment" evidencing full-time attendance at a school or university" for a particular timeframe.

CONCLUSION

[18] The application for leave to appeal is refused.

Janet Lew
Member, Appeal Division