



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. J. C.*, 2017 SSTADIS 612

Tribunal File Number: AD-17-379

BETWEEN:

Minister of Employment and Social Development

Applicant

and

J. C.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: November 6, 2017

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, the Minister of Employment and Social Development, seeks leave to appeal the General Division's decision dated February 13, 2017, which determined that the Respondent, J. C., was entitled to a retroactive Canada Pension Plan retirement pension from March 2012 at a monthly rate of \$124.49, resulting in a net retroactive payment of \$432.80. The Applicant argues that the General Division erred in its calculation, by failing to consider subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations*. The Applicant claims that had the General Division considered and properly applied these provisions, it would have calculated a net overpayment of \$130.38 to the Respondent.

[3] The Applicant has also raised other arguments in support of its application requesting leave to appeal, but it is unnecessary for me to address each of them, if I grant leave to appeal on at least one of them.¹

ISSUE

[4] Does the appeal have a reasonable chance of success on the issue of whether the General Division failed to apply subsection 45(2) of the *Canada Pension Plan* and subsection 61(2) of the *Canada Pension Plan Regulations*?

ANALYSIS

[5] 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 *Department of*

¹ *Mette v. Canada (Attorney General)*, 2016 FCA 276.

Employment and Social Development Act (DESDA) and that the appeal has a reasonable chance of success. The Federal Court has endorsed this approach.²

[6] The Applicant argues that the General Division erred in law by failing to consider and apply subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations*. These subsections speak to the annual adjustments of the basic monthly benefit.

[7] The General Division does not appear to have referred to these subsections, although it noted that it applied an adjustment factor. It is not readily apparent whether the General Division considered and properly applied these subsections. Accordingly, I am satisfied that the appeal has a reasonable chance of success and that the General Division may have erred by failing to consider and apply subsection 45(2) of the *Canada Pension Plan* and subsection 62(1) of the *Canada Pension Plan Regulations*.

CONCLUSION

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

[9] In accordance with subsection 58(5) of the DESDA, the application for leave to appeal becomes the notice of appeal. Within 45 days after the date of this decision, the parties may (a) file submissions with the Appeal Division; or (b) file a notice with the Appeal Division stating that they have no submissions to file. The parties may make submissions regarding the form the hearing of the appeal should take (e.g. by teleconference, videoconference, in person or on the basis of the parties' written submissions), together with submissions on the merits of the appeal.

Janet Lew
Member, Appeal Division

² *Tracey v. Canada (Attorney General)*, 2015 FC 1300.