

Citation: *Minister of Human Resources and Skills Development v J. M.*, 2014 SSTAD 17

Appeal No: CP 28277

BETWEEN:

Minister of Human Resources and Skills Development

Appellant

and

J. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre LAFONTAINE

TYPE OF HEARING: On the record

DATE OF DECISION: March 14, 2014

DECISION

[1] The request made by the Appellant to have the Appeal of the Appellant allowed and to dismiss the Respondent's application for disability is dismissed.

INTRODUCTION

[2] The Respondent applied for a disability pension under the *Canada Pension Plan (CPP)* on October 18, 2004.

[3] On July 13, 2011, a Review Tribunal determined that a *CPP* disability pension was payable to the Respondent.

[4] The Appellant filed an Application for Leave to Appeal of the decision of the Review Tribunal with the Pension Appeal Board (PAB) on October 11, 2011.

[5] The PAB granted leave to appeal on November 4, 2011. Pursuant to section 259 of the *Jobs, Growth and Long-term Prosperity Act of 2012*, the Appeal Division of the Tribunal is deemed to have granted leave to appeal on April 1, 2013.

[6] The Appellant requested that the Respondent sign and deliver to it a Consent for Service Canada to obtain personal information, a Consent to attend an Independent Medical Examination (IME) and a Request Sheet for Additional Information forms (hereinafter "Consents") pursuant to s. 68 of the *Canada Pension Plan Regulations (the "CPP Regulations")*.

[7] The Respondent did not sign and provide the Consents to the Appellant.

[8] The Appellant then brought a motion before the PAB seeking an order that the Respondent provide these Consents, and that his disability application be dismissed if he failed to do so within a prescribed time period.

[9] On October 16, 2012, the PAB ordered that the Respondent provide the Consents within 21 days, and upon failure to do so, the Appellant would be at liberty to apply ex-parte for an order granting the appeal of the Appellant and dismissing the

Respondent's application for disability.

[10] On December 10, 2013, since the Respondent had still not provided to the Appellant the Consents he was required by order to provide, this Tribunal received a request from the Appellant for an order granting the appeal of the Appellant and dismissing the Respondent's application for disability.

[11] On December 13, 2013, a letter was sent by the Tribunal to the Respondent with a copy of the request of the Appellant. The Respondent was asked to provide any additional written submissions in response to the request of the Appellant by January 24, 2014.

[12] The Respondent did not provide any written submissions in response to the letter of the Tribunal dated December 13, 2013.

[13] On February 26, 2014, a notice of hearing was sent to the parties that included a prior request from the Tribunal to obtain written submissions from the parties by March 7, 2014, on the following specific issues:

- Does the Social Security Tribunal have jurisdiction, following the PAB Order dated October 16, 2012, to grant an order allowing the appeal and dismissing the Respondent's application for disability?
- If it does, on what statutory basis does it have jurisdiction?
- If not, on what basis does it not have jurisdiction?

[14] The parties submitted, in the allowed period, their written submissions in response to the above mentioned request of the Tribunal.

THE LAW

[15] Section 4 of the *Social Security Tribunal Regulations* (the “*SST Regulations*”) provides that a party may request the Tribunal to provide for any matter concerning a proceeding.

[16] Section 68 of the *CPP Regulations* provides that where an Applicant claims that he is disabled, he shall supply certain information to the Minister. This includes information regarding his occupation and earnings, and to undergo such special examinations and provide reports as the Minister deems necessary for the purpose of determining the disability of that person.

ISSUE

[17] This Tribunal must decide whether or not it can render an order granting the appeal of the Appellant and dismissing the disability application of the Respondent for failure by the Respondent to comply with the order of the PAB.

EVIDENCE AND SUBMISSIONS

[18] On October 16, 2012, the PAB ordered that the Consents be provided within 21 days, and if they were not, the Appellant could then seek an order to have the appeal granted and the disability application of the Respondent dismissed.

[19] The Appellant has informed the Tribunal that the Respondent still has not provided the Consents required by the PAB Order. This fact is not disputed by the Respondent.

[20] The Appellant now seeks to have the appeal granted and the Respondent’s disability claim dismissed as the Respondent has not provided the Consents.

ANALYSIS

[21] On October 16, 2012, the PAB rendered an order (the “PAB Order”) in the present case that reads as follows:

“

ORDER

1. Requiring the Respondent to sign and provide to the Appellant the Consent for Service Canada to obtain personal information, the Consent to attend an Independent Medical Examination and a request Sheet for Additional Information Forms, within 21 days of receipt of this order.
2. That the hearing of this appeal not be re-scheduled until at least 90 days after the Respondent has provided the above consents.
3. Upon failure to comply with the within Order, the Appellant Minister is at liberty to apply ex-parte for an Order granting the appeal and dismissing the Respondent's application for disability.”

[22] It is not in dispute that the Respondent has not signed and provided to the Appellant the Consents required by said PAB Order.

[23] The now repealed s. 15 of the *Pension Appeal Board Rules of Procedures* (the “PAB Rules”) specifically provided that the PAB had the statutory authority to render such orders prior to April 1st, 2013. It stated the following:

“15. (1) After the time limited for filing a reply has expired, any party to an appeal may apply to the Chairman, a member of the Board or the Registrar for an order

(a) directing any other party to the appeal to make discovery of such of the documents that are or have been in his possession relating to any matter in question therein;

(b) permitting him to examine for the purpose of discovery any party to the appeal; or

(c) directing or permitting both the discovery and examination described in paragraphs (a) and (b).

(2) The Chairman, a member of the Board or the Registrar may, on receipt of an application made pursuant to subsection (1), make such order as in his opinion the circumstances of the case require and, without restricting the generality of the foregoing, may in the order

(a) specify the form of the affidavit to be used for the production of documents;

- (b) designate the person to be examined, where the party is a corporation or unincorporated association;
- (c) designate the person before whom the examination is to be conducted and the manner in which it is to be conducted; and
- (d) provide for the use that may be made of the discovery at the hearing of the appeal.”

[24] The Tribunal takes notice that the provisions of s.15 of the *PAB Rules* permitting the issuance of such orders were not reproduced in the *SST Regulations*.

[25] The statutory authority underlying the PAB orders is found in s. 68(1) and (2) of the *CPP Regulations*:

“68. (1) Where an applicant claims that he or some other person is disabled within the meaning of the Act, he shall supply the Minister with the following information in respect of the person whose disability is to be determined:

- (a) report of any physical or mental disability including
 - (i) the nature, extent and prognosis of the disability,
 - (ii) the findings upon which the diagnosis and prognosis were made,
 - (iii) any limitation resulting from the disability, and
 - (iv) any other pertinent information, including recommendations for further diagnostic work or treatment, that may be relevant;
- (b) a statement of that person’s occupation and earnings for the period commencing on the date upon which the applicant alleges that the disability commenced; and
- (c) statement of that person’s education, employment experience and activities of daily life.

(2) In addition to the requirements of subsection (1), a person whose disability is to be or has been determined pursuant to the Act may be required from time to time by the Minister

- (a) to supply a statement of his occupation and earnings for any period; and
- (b) to undergo such special examinations and to supply such reports as the

Minister deems necessary for the purpose of determining the disability of that person.

[26] The Federal Court of Appeal has ruled that an applicant is obliged to comply with s.68 of the *CPP Regulations – Spears v. Canada (AG)*, 2004 FCA 193. More recently, the Federal Court determined that s. 68 of the *CPP Regulations* authorized the Minister to require that a person seeking CPP benefits provide medical information and submit to medical examination “from time to time” - *Zhang v. Canada (AG)*, 2012 FC 808.

[27] However, the relevant issue before the Tribunal is not whether the Respondent was obliged to comply with s.68 of the *CPP Regulations* but whether or not the Tribunal has jurisdiction to grant an order allowing the appeal of the Appellant and dismissing the Respondent’s application for disability for failure to comply with the PAB Order.

[28] The Appellant argues that the Tribunal has the authority to do so on the basis of s.4 of the *SST Regulations* (p.1 of the submissions of the Appellant).

[29] Section 4 of the *SST Regulations* states the following:

“Requests to Tribunal

4. A party may request the Tribunal to provide for any matter concerning a proceeding, including the extension of a time limit imposed by these Regulations, by filing the request with the Tribunal.

(Underlined by the undersigned)

[30] The word “Proceeding” is not defined by the *SST Regulations*. The Black Law Dictionary however defines the word “proceeding” as “the steps or measures taken in the course of an action”

[31] The French version of s.4 of the *SST Regulations* supports the interpretation that the Tribunal only has authority to determine, upon request, the procedural rules or steps

to be taken in the course of a case as it states the following:

“Demande au Tribunal

4. À la demande déposée par une partie auprès du Tribunal, celui-ci peut déterminer la règle applicable à toute question relative à l'instance, notamment la prorogation des délais impartis par le présent règlement.

(Underlined by the undersigned)

[32] Furthermore, s. 10.1 (1) of the repealed *PAB Rules* is revealing of the powers that were once attributed to the PAB but are not reproduced in the *SST Regulations*. It states the following:

“NOTICE OF MOTION

10.1 (1) Any matter that arises, in the course of an appeal or seeking leave to appeal, that can be considered in advance of the hearing of the appeal without the personal appearance of the parties and requires a decision or order of the Board, may be brought before the Chairman or Vice-Chairman by notice of motion.

(Underlined by the undersigned)

[33] The French version of s.10.1(1) of the *PAB rules* is also very different from the French version of s.4 of the *SST Regulations*. It states:

“AVIS DE MOTION

10.1 (1) Toute question soulevée dans le cadre d'un appel ou de la demande d'autorisation d'interjeter appel qui peut être examinée avant la tenue de l'audition de l'appel sans que les parties comparaissent et qui requiert une décision ou une ordonnance de la Commission peut être déférée au président ou au vice-président par voie d'avis de motion. »

(Underlined by the undersigned)

[34] The Tribunal can only take notice that s. 10.1(1) of the *PAB Rules* permits the PAB to address “any matter that arises in the course of an appeal...that requires a decision or order of the Board”. On the other hand, s. 4 of the *SST Regulations* is a substantially different provision since it limits the Tribunal to “any matter concerning a

proceeding” and does not provide the possibility for the Tribunal to render an order.

[35] The Appellant has requested that the disability application of the Respondent be dismissed for failure to provide the Consents as per the PAB Order of October 16, 2012.

[36] For the above mentioned reasons, the Tribunal cannot consider the request of the Appellant to be “a matter concerning a proceeding” as per the prescriptions of s.4 of the *SST Regulations*. Furthermore, the Tribunal does not have the authority to issue such orders under the *SST Regulations* or any other current legislation.

CONCLUSION

[37] The request by the Appellant is dismissed

Pierre Lafontaine

Member, Appeal Division