Citation: *L. W. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 47

Appeal No. AD-13-52

BETWEEN:

L. W.

Applicant

and

Minister of Human Resources and Skills Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: March 27, 2014

DECISION: LEAVE REFUSED

DECISION

[1] The Application for leave to appeal is refused.

BACKGROUND & HISTORY OF PROCEEDINGS

[2] On April 10, 2013, a Review Tribunal determined that a Canada Pension Plan disability pension was not payable to the Applicant, on the basis that he was capable of pursuing regularly substantially gainful employment subsequent to his minimum qualifying period of December 31, 1995.

[3] On April 18, 2013, the Applicant filed an application requesting leave to appeal (the "Application") with the Appeal Division of the Social Security Tribunal (the "Tribunal"), within the time permitted under the *Department of Employment and Social Development (*DESD) *Act*.

[4] On March 6, 2014, I submitted two questions to the Respondent: firstly, whether there is an updated or new earnings history and secondly, if so, did the new earnings history change the Applicant's minimum qualifying period? The Respondent wrote on March 12, 2014, advising that there was no new earnings history and that there was no change in the Applicant's minimum qualifying period.

ISSUE

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

THE LAW

[6] According to subsections 56(1) and 58(3) of the DESD Act, "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal".

[7] Subsection 58(2) of the DESD Act provides that "leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success".

APPLICANT'S SUBMISSIONS

[8] In his application requesting leave to appeal the decision of the Review Tribunal, the Applicant did not specify any grounds of appeal. Instead, in both his letter dated April 18, 2013 addressed to the Social Security Tribunal and a document titled, "Lance CPP-D Appeal", the Applicant listed his various medical conditions and described their progressive nature and how they impact upon his functionality.

[9] The Applicant also filed a medical opinion dated November 22, 2012 prepared by his family physician, in support of his appeal. Dr. Armstrong noted that the Applicant has been unable to work since 2007. Dr. Armstrong confirmed the Applicant's diagnosis and prognosis. Dr. Armstrong did not raise any grounds of appeal in his medical opinion.

RESPONDENT'S SUBMISSIONS

[10] Other than preparing a response to the two questions about the Applicant's earnings history and minimum qualifying period, the Respondent has not filed any additional submissions.

ANALYSIS

Requirements for a Disability Pension

[11] The Applicant's focus appears to be on his current condition, without appreciation for his condition at the time of his minimum qualifying period. Some background therefore would be helpful to understand how the Review Tribunal arrived at its decision. Subsection 44(1)(b) of the *Canada Pension Plan* sets out the eligibility requirements for a disability pension. In order to qualify for a disability pension, an applicant must:

a) Be under 65 years of age;

b) Not be in receipt of the Canada Pension Plan retirement pension;

c) Be disabled; and

d) Have made valid contributions to the Canada Pension Plan for not less than the minimum qualifying period.

[12] If an Applicant does not meet one of these four criteria, he does not qualify for a disability pension.

[13] The minimum qualifying period is the latest date by which an Applicant is required to be found disabled. Subsection 44(2)(b) of the *Canada Pension Plan* sets out how the minimum qualifying period is calculated. The calculation is based in part on when an applicant made valid contributions to the Canada Pension Plan.

[14] The Earnings History shows that the Applicant had earnings up to 2006. Income tax returns for the years 2003 to 2010 show additional earnings. The question therefore becomes whether or not he might have made any valid contributions to the Canada Pension Plan within these following years, as it could extend his minimum qualifying period. The Respondent prepared a summary of the Applicant's earnings history for the years 1986 to 2006. If we add the years 2007 to 2010, the earnings history is as follows:

Year	**Earnings / Taxable Income**	**Disability Basic Exemption**	**Valid Contribution**
1986	$10,610	$2,500	Yes
1987	$5,100	$2,500	Yes
1988	$8,403	$2,600	Yes
1989	$4,990	$2,700	Yes
1990	$3,282	$2,800	Yes
1991	$1,066	$3,000	No
1992		$3,200	
1993		$3,300	
1994		$3,400	
1995		$3,400	
1996		$3,500	
1997		$3,500	
1998		$3,600	
1999		$3,700	
2000		$3,700	
2001		$3,800	
2002	$104	$3,900	No
2003	0	$3,900	

2004	$3,744	$4,000	No
2005	$6,491	$4,100	Yes
2006	$334	$4,200	No
2007	0	$4,300	No
2008	0	$4,400	
2009	0	$4,600	
2010	$171	$4,700	No

[15] The above table also shows the years in which the Applicant made valid contributions. He made valid contributions in the years 1986, 1987, 1988, 1989, 1990 and 2005.

[16] To satisfy the contributory requirements under the *Canada Pension Plan*, the Applicant must have made valid contributions in at least four of the past six calendar years or three of the past six years, with at least 25 years of contributions. He meets neither of these and therefore must qualify under the late applicant provisions of the *Canada Pension Plan*.

[17] In this particular case, the Applicant must have made valid contributions to the Canada Pension Plan in at least five years of a ten year period ranging from 1986 to 1995. The Applicant made valid contributions to the Canada Pension Plan for the years 1986, 1987, 1988, 1989 and 1990 and hence, he last met the contributory requirements on December 31, 1995. In other words, his minimum qualifying period is December 31, 1995. He was required to show that he was disabled by this date. The Review Tribunal needed to be satisfied that the Applicant was disabled by December 31, 1995, otherwise it would find that he did not qualify for a disability pension under the Canada Pension Plan.

[18] Here, the Review Tribunal simply found that not only was there an absence of any documentary medical evidence at all at the time of the Applicant's minimum qualifying period, but also that the Applicant had earnings after his minimum qualifying period. In other words, The Review Tribunal felt that the Applicant's earnings after December 31, 1995 demonstrated that he was capable regularly of pursuing substantially gainful employment and that he therefore was not disabled by the time of his minimum qualifying period and continuously since then.

[19] Although a leave to appeal application is a first, and lower, hurdle to meet than the one that must be met on the hearing of the appeal on the merits, some arguable ground upon which the proposed appeal might succeed is needed in order for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (T.D.).

[20] Subsection 58(1) of the DESD Act set 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.

[21] For our purposes, the decision of the Review Tribunal is considered to be a decision of the General Division.

[22] In order for me to consider granting leave, the Applicant must show at least one ground of appeal. The Applicant has not suggested that the Review Tribunal failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. He has not cited any errors of law which the Review Tribunal might have made, nor does he allege that the Review Tribunal based its decision on an erroneous finding of fact. The Applicant simply disagrees with the decision of the Review Tribunal. The Applicant does not appear to have given any consideration to the fact that the Review Tribunal found that he was required to have shown that he was disabled by the time of his minimum qualifying period and continuously since then. He has not suggested that the Review Tribunal did not afford him a fair hearing, nor addressed whether any of the legal tests which the Review Tribunal might have applied were correct or whether the Review Tribunal may have made any errors in the findings of fact.

[23] The Review Tribunal was permitted to consider the evidence before it and attach whatever weight it determined appropriate. It was also open to the Review Tribunal to assess the quality of the evidence and determine what facts, if any, to accept or disregard. If the Applicant is requesting that we re-assess the medical evidence and decide in his favour, I am unable to do this, as I am required to determine whether any of his reasons fall within any of the grounds of appeal and whether any of them have a reasonable chance of success. The Application discloses no grounds of appeal for me to consider.

Dr. Armstrong's Report

[24] The Applicant has not stated why he has filed the additional opinion of Dr. Armstrong, other than to bolster the medical opinions before the Review Tribunal. He has not indicated how the additional opinion might fall into one of the grounds of appeal.

[25] Although the Applicant has filed an additional medical opinion in support of his leave application and appeal, I am unable to consider any new materials, given the narrow provisions of subsection 58(1) of the DESD Act. I am unable to consider any new materials, even any which might have shed some light on what the Applicant's condition might have been at the time of his minimum qualifying period.

[26] If the Applicant has filed the medical report in an effort to rescind or amend the decision of the Review Tribunal, he must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and he must also file an application for rescission or amendment with the same Division that made the decision (or in this case, the General Division of the Social Security Tribunal). There are additional requirements that an Applicant must meet to succeed in an application for rescinding or amending a decision. Section 66 of the DESD Act also requires an applicant to demonstrate that the new fact is material and that it could not have been discovered at the time of the hearing with the exercise of reasonable diligence. The Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so. This is not a re-hearing of the merits of the claim. In

short, there are no grounds upon which I can consider the medical opinion of Dr. Armstrong, notwithstanding how supportive the Applicant feels it might be.

CONCLUSION

[27] As the Applicant has not identified any grounds of appeal, I am unable to find that the appeal has a reasonable chance of success.

[28] The Application is refused.

Janet Lew
Member, Appeal Division