Citation: *G. P. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 63

Appeal No. AD-13-757

BETWEEN:

G. P.

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: April 10, 2014

DECISION

[1] The Tribunal refuses leave to appeal to the Appeal Division of the Social Security Tribunal.

BACKGROUND & HISTORY OF PROCEEDINGS

[2] The Applicant seeks leave to appeal the decision of the Review Tribunal of March 5, 2013. The Review Tribunal had determined that a Canada Pension Plan disability pension was not payable to the Applicant, as it found that his disability was not "severe" at the time of his minimum qualifying period of December 31, 1988. The Applicant filed an application requesting leave to appeal (the "Application") with the Appeal Division of the Social Security Tribunal (the "Tribunal") on June 5, 2013, within the time permitted under the *Department of Employment and Social Development* (DESD) *Act.*

ISSUE

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

THE LAW

[4] 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".

[5] 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

[6] The Applicant filed a letter dated May 30, 2013 and enclosed two documents titled, "Grounds for Appeal" and "Statement of Allegation". The Applicant seeks leave to appeal on numerous grounds:

(a) The Review Tribunal miscalculated his minimum qualifying period ("MQP"). The Applicant contends that the MQP is 1998 and not 1988, as calculated by the Review Tribunal. The Applicant refutes that he had ever agreed to an MQP of 1988, as indicated in the decision of the Review Tribunal. The Applicant submits that the MQP is December 31, 1998. He relies on the date provided by the Department of Human Resources and Skills Development Canada ("HRSDC") (as it then was) in its letter of August 25, 2011.

(b) In calculating his MQP, the Review Tribunal failed to consider his earnings from the Perth District Health Unit and also failed to take into account the child rearing provisions. Notwithstanding his previous submissions set out in paragraph (a) above, the Applicant also submits that had the Review Tribunal taken his additional earnings and the child rearing provisions into account, this would have extended his MQP beyond December 31, 1998. He does not state what he calculates his MQP should be.

(c) There are "material misrepresentations within the decision … that are relied upon in drawing false and unjust conclusions such as a persons (*sic)* cognitive function versus physical functional capacities and the consequent severity of disability which is arguably discriminatory in such analysis." From this, I understand that the Applicant contends that the Review Tribunal made an error in law that, as he demonstrated some language proficiency, that he therefore could not have been physically disabled. He submits that effectively, the Review Tribunal focused on his cognitive abilities and language proficiency rather than on his physical disabilities.

(d) The Review Tribunal did not properly approach the issue of "substantially gainful employment" in determining whether the Applicant's disability could be considered severe. The Applicant submits that the Review Tribunal failed to consider the fact that (1) he had been involved in an HRSDC-sponsored employment program in 2005, (2) any work attempts resulted in hospitalization, and (3) any work attempts also resulted in deterioration of his medical conditions, which ultimately forced him to discontinue any employment. I understand that the Applicant submits that the

Review Tribunal based its decision on an erroneous finding of fact in finding that his disability was not severe.

(e) The Review Tribunal failed to consider or refer to critical medical and expert evidence, as well as the evidence of family and close friends, when determining whether the Applicant's disability is severe and prolonged. In particular, the Applicant submits that the Review Tribunal failed to refer to or consider several hospital emergency department records which were filed at the Review Tribunal hearing, and also failed to refer to or consider the testimony of Dr. Michael Ford and others, or otherwise took the evidence out of context. The Applicant noted that initially some of the documentation had not been placed in the hearing file materials and submitted that as a consequence, the Review Tribunal either did not consider them or was already coloured in its assessment of his claim. From this, I understand that the Applicant contends that the Review Tribunal based its decision on erroneous findings of fact, without consideration for the material before it.

(In his "Statement of Allegation", the Applicant suggested that Dr. Ford's medical report of February 2, 2011 was not considered by the Review Tribunal in its decision. I note that the Review Tribunal in fact referred to Dr. Ford's report of February 2, 2011 at paragraph 35 of its decision.)

(f) The Review Tribunal committed numerous errors of law and fact, particularly at paragraphs 28, 29, 39, 40, 46, 48 and 49 of its decision. The Applicant does not cite what the specific errors are which he alleges that the Review Tribunal committed.

(g) The Review Tribunal failed to consider the fact that in 2007, the Ontario Workplace Safety and Insurance Board ("WSIB") determined that the Applicant is disabled and therefore qualifies for WSIB benefits. The Applicant submits that as WSIB found him disabled, so too should the Review Tribunal have found him disabled. In effect, the Applicant contends that the Review Tribunal committed an error in law.

(h) The decision of the Review Tribunal is erroneous and unfair because of the impact it has had on the Applicant and his family. The Applicant contends also that there is

systemic discrimination under the *Canada Pension Plan*, in that anyone aged 21 or under is refused disability benefits.

RESPONDENT'S SUBMISSIONS

[7] The Respondent has not filed any written submissions.

ANALYSIS

[8] 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 for leave to be granted: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC).

[9] Subsection 58(1) of the DESD Act states that the only grounds of appeal are 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.

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

[11] I am required to determine whether any of the Applicant's reasons fall within any of the grounds of appeal and whether any of them have a reasonable chance of success.

Errors in Law

Minimum Qualifying Period

[12] The significance of the MQP cannot be overstated, as an applicant is required to be found disabled on or before the end of that date and continuously since then.

[13] I will address submissions (a) and (b) together. The Applicant submits that the Review Tribunal committed an error in law in calculating his MQP. He contends that his MQP is 1998 and not 1988. He relies on the date provided by HRSDC in its letter dated August 25, 2011.

[14] HRSDC also prepared letters dated January 25, 2011 and June 9, 2011. It calculated an MQP date of 1988 in those letters. In submissions dated December 8, 2011, HRSDC provided an MQP date of 1988 and also provided a comprehensive explanation as to how it calculated the MQP. Insofar as I can determine, HRSDC has never provided any accounting as to why its August 25, 2011 calculation differs so markedly from its other calculations.

[15] The Applicant also submits that once the late applicant and child rearing provisions and earnings with the Perth District Health Unit are taken into account, his MQP is extended beyond 1998. However, apart from these provisions and the issue of additional earnings, and the HRSDC letter of August 25, 2011, the Applicant has not provided any basis for why he believes the Review Tribunal miscalculated his MQP. The Applicant has not provided his own calculation of the MQP, nor suggested what date his MQP might be, other than it is either 1998 or some date after 1998. Without setting out any specific errors committed by the Review Tribunal, my consideration of the leave application on this point is limited to whether the Review Tribunal erred in law in failing to apply the late applicant or child rearing provisions or any additional earnings in calculating the Applicant's MQP.

[16] The Applicant's earnings history is as follows:

Year	Earnings / Taxable Income	Disability Basic Exemption	Valid Contribution
1985	$ 3,731	$2,300	Yes
1986	$ 4,449	$2,500	Yes
1987	$ 6,338	$2,500	Yes
1988	0	$2,600	No
1989	0	$2,700	No
1990	0	$2,800	No
1991	0	$3,000	No
1992	0	$3,200	No
1993	0	$3,300	No
1994	0	$3,400	No
1995	0	$3,400	No
1996	0	$3,500	No
1997	0	$3,500	No
1998	0	$3,600	No
1999	0	$3,700	No
2000	$12,182	$3,700	Yes
2001	0	$3,800	No
2002	0	$3,900	No
2003	$37,986	$3,900	Yes
2004	$32,032	$4,000	Yes
2005	0	$4,100	No
2006	0	$4,200	No
2007	0	$4,300	No
2008	0	$4,400	No
2009	0	$4,600	No
2010	0	$4,700	No

[17] The above table also shows the years in which the Applicant made valid contributions to the Canada Pension Plan. He made valid contributions in the years 1985, 1986, 1987, 2000, 2003 and 2004.

[18] Subsection 44(2)(b) of the *Canada Pension Plan* sets out how MQP is calculated. The calculation is based in part on when an applicant made valid contributions to the Canada Pension Plan.

[19] In this particular case, the Applicant must have made valid contributions to the Canada Pension Plan in at least two years of a three year period ranging from 1986 to 1988. Of these years, the Applicant made valid contributions to the Canada Pension Plan for the years 1986 and 1987 and he therefore last met the contributory requirements on December 31, 1988. In other words, his MQP is December 31, 1988. The Review Tribunal needed to be satisfied that the Applicant was disabled by December 31, 1988; otherwise, it would find that he did not qualify for a disability pension under the *Canada Pension Plan*.

[20] The Applicant submits that the late applicant provisions should apply, which would extend his MQP. In fact, the late applicant provisions had been applied in the Applicant's case, as he did not meet the contributory requirements at the time of his application in June 2010.

[21] To satisfy the contributory requirements under the *Canada Pension Plan* at the time of his application, 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 met neither of these requirements, but the Review Tribunal applied the late applicant provisions in order to determine if he might have met the requirements at any time in his contributory period, such as to find an MQP date at all. Had the Review Tribunal failed to apply the late applicant provisions, it would not have found an MQP date and thus, there would have been no need for the Review Tribunal to have even considered whether the Applicant could be found disabled. I find no merit to the submission that the Review Tribunal should have applied the late applicant provisions in calculating his MQP when it very clearly did.

[22] The question therefore becomes whether the Applicant might have made any valid contributions to the Canada Pension Plan in addition to those made in 1985, 1986, 1987, 2000, 2003 and 2004, as they could extend his MQP.

[23] The Applicant submits that he has additional earnings from the Perth District Health Unit which would extend his MQP. However, there is no evidence when he made these earnings and whether he made valid contributions to the Canada Pension Plan in respect of these earnings. As the Review Tribunal did not have any evidence before it of additional

earnings and valid contributions, it cannot be said that the Review Tribunal made an error in law in failing to extend his MQP on this ground.

[24] The Applicant submits that the Review Tribunal failed to apply the child rearing provisions to further extend his MQP. The effect of the child rearing provisions is that it enables an applicant to remove upwards of six years per child from his contributory period, where the earnings are below the year's basic exemption or the year's basic exemption for disability. The Applicant's children were born in 1993, 1996 and 2001. Even with the child rearing provisions, the Applicant's MQP is not extended. Even so, an applicant is still required to make valid contributions to the Canada Pension Plan for not less than the MQP. The Applicant here simply has not made sufficient valid contributions to the Canada Pension Plan. Hence, I find that there is no arguable ground that the Review Tribunal made an error in failing to extend his MQP on this basis.

The Applicant's Language Proficiency

[25] The Applicant contends that the Review Tribunal made an error in law in considering his cognitive abilities and language proficiency, rather than focussing exclusively on his physical disabilities.

[26] In assessing whether an applicant is disabled for the purposes of the *Canada Pension Plan,* a Review Tribunal must review the medical and other expert opinions and records, but a Review Tribunal is not restricted to simply considering an applicant's diagnoses, symptoms and prognoses. The diagnoses, symptoms and prognoses make up only part of the overall picture of an applicant's disability, and are insufficient on their own to address the question of whether an applicant's disability is severe. There are numerous factors that a Review Tribunal can consider in its assessment of an applicant's disability.

[27] A Review Tribunal would necessarily want to see how an applicant's medical condition and his symptoms impact his activities of daily living, recreational and social pursuits and work and volunteer efforts. This could include but would not be limited to considering an applicant's capabilities versus functional limitations, whether he requires or seeks assistance with work duties, household maintenance and chores or personal care, or

whether he has abandoned or is doing certain activities less frequently or has modified how he performs those activities. A Review Tribunal could also look at the recommendations for treatment for an applicant, his treatment history and efforts at mitigation and the type and dosage of medication he uses.

[28] Further, in *Villani v. Canada (Attorney General),* 2001 FCA 248, the Court held that while medical evidence is still needed, as is evidence of employment efforts and possibilities, an applicant's particular circumstances could also be taken into account, in assessing disability. The Court held that,

> "Each word in [subparagraph 42(2)(a)(i) of the *Canada Pension Plan*] must be given meaning and when read in that way the subparagraph indicates . . . that Parliament viewed as severe any disability which renders an applicant incapable of pursuing with consistent frequency any truly remunerative occupation. …it follows from this that the hypothetical occupations which a decision-maker must consider cannot be divorced from the particular circumstances of the application, such as age, education level, language proficiency and past work and life experience."

[29] In my view, there was clear authority for the Review Tribunal to have considered the Applicant's personal circumstances, such as his cognitive abilities and language proficiency, in determining his ability to regularly pursue any substantially gainful occupation.

[30] I find that there is no arguable ground that the Review Tribunal erred in law in considering factors such as the Applicant's cognitive abilities and language proficiency, rather than focusing exclusively on his physical disabilities, when determining whether he could be found disabled at the time of his MQP.

Ontario Workplace Safety and Insurance Board

[31] While WSIB determined that the Applicant is disabled and therefore qualifies for WSIB benefits, this is irrelevant to the determination of whether the Applicant qualifies for a Canada Pension Plan disability pension and is therefore not a basis for appeal. The Review Tribunal is not bound by any determinations made by WSIB or, for that matter, any other body. The *Canada Pension Plan* strictly defines disability and the Applicant is still required to prove that he is disabled as defined by the *Canada Pension Plan*.

Paragraphs 28, 29, 39, 40, 46, 48 and 49

[32] Although the Applicant has identified numerous paragraphs where he submits the Review Tribunal committed various errors of law or findings of fact, he has not specifically expressed what errors he contends that the Review Tribunal committed. An applicant needs to avoid generalities and clearly set out any errors which the Review Tribunal may have made. It is insufficient for the purposes of a leave application to make bald submissions without some basis to support them. While I could speculate as to what the Applicant may have intended, this is unfair to either party. First, the burden of proof lies with an applicant to point out what the error is, and second, I could be grossly under- or overstating what the alleged error might be. For me to determine whether the appeal might have a reasonable chance of success where an error of law or an erroneous finding of fact is alleged, the Applicant needs to, at the very least, properly identify the error of law or identify a specific erroneous finding of fact.

[33] Further, if the Applicant submits that there are erroneous findings of fact, for the purposes of this leave application, I would need to satisfy myself that the Review Tribunal made the findings which the Applicant submits the Review Tribunal made.

[34] I will however provide some general commentary about these submissions.

[35] The Applicant cites paragraphs 28, 29 and 39 as containing errors of law or findings of fact. Paragraphs 28 and 29 summarize the evidence before the Review Tribunal. They are not findings of fact made by the Review Tribunal, so it cannot be said that the Review Tribunal made any erroneous findings of fact in respect of these two paragraphs.

[36] Paragraph 39 contains submissions made by the Respondent. The Respondent, much like the Applicant, is one of the parties involved in the claim. The Applicant has failed to distinguish between the Respondent and the Review Tribunal. They are not one and the same. The Review Tribunal is an administrative tribunal, independent of any of the parties, including the Respondent. The Review Tribunal acts at arm's length and is not bound by any submissions from any of the parties before it. The grounds for appeal are based on errors

committed by the Review Tribunal, not the Respondent or any other party. There is no right to appeal a Review Tribunal's decision based solely on submissions made by the Respondent.

[37] In paragraph 40 of its decision, the Review Tribunal set out what it considered to be the issue which it had to address. I understand that the Applicant is of the view that the MQP cited by the Review Tribunal is incorrect. I have addressed this issue above.

[38] Paragraphs 46, 48 and 49 set out some of the findings made by the Review Tribunal. The Applicant has not identified any specific erroneous findings of fact. I am not going to speculate as to what factual error(s) the Review Tribunal may have made. As long as there is an evidentiary foundation and unless there is a glaring error in its finding of fact, I will presume that the Review Tribunal properly came to its decision after assessing and analyzing the evidence. If the Applicant is unable to point to a specific error in its findings of fact, I am not going to interfere with the Review Tribunal's jurisdiction to make a decision based on the evidence before it.

[39] Paragraph 49 also sets out the proposition that a "disability is severe only if it prevents an Appellant from regularly pursuing any substantially gainful employment". Subsection 42(2)(a) of the *Canada Pension Plan* states that a disability is "severe only if by reason thereof the person in respect of whom the determination is made is incapable regularly of pursuing any substantially gainful employment". I do not see any material difference in the restatement of the law set out in paragraph 49 of the decision from subsection 42(2)(a) of the *Canada Pension Plan* such as to find an arguable ground that the Review Tribunal may have made an error in law.

[40] On these submissions, I find that there is no arguable ground that the Review Tribunal either erred in law or made erroneous findings of fact without regard for the material before it.

Errors in Finding of Facts

The Evidence

a. Substantially Gainful Employment

[41] The Applicant submits that the Review Tribunal failed to properly consider the issue of substantially gainful employment in determining whether his disability could be considered severe. The Applicant submits that the Review Tribunal failed to consider the fact that (1) he had been involved in an HRSDC-sponsored employment program in 2005, (2) any work attempts resulted in hospitalization, and (3) any work attempts also resulted in deterioration of his medical conditions. He submitted hospital emergency records for the years 2002 and 2003 (see pages 30 to 34 of the Request for Leave to Appeal file). He submits that the hospital records show a deterioration of his condition.

[42] In fact, the Review Tribunal did consider that he had been involved in an HRSDC-sponsored employment program in 2005, at paragraph 44 of its decision. It stated, "The Appellant also attempted to complete a retraining program offered by HRSDC in 2005".

[43] As for the other two considerations, a Review Tribunal is not required to refer to each and every piece of evidence before it, and it can be presumed that the Review Tribunal considered all of the evidence.

[44] The Federal Courts have previously addressed this submission, in other cases, that Review Tribunals or Pension Appeals Boards have failed to consider all of the evidence. In *Simpson v. Canada (Attorney General)*, 2012 FCA 82, the Applicant's counsel identified a number of medical reports which she said that the Pension Appeals Board ignored, attached too much weight to, misunderstood, or misinterpreted. In dismissing the Applicant's application for judicial review, the Court of Appeal held that,

> "First, a tribunal need not refer in its reasons to each and every piece of evidence before it, but is presumed to have considered all the evidence. Second, assigning weight to evidence, whether oral or written, is the province of the trier of fact. Accordingly, a court hearing an appeal or an application for judicial review may not normally substitute its view of the probative value of evidence for that of the tribunal that made the impugned finding of fact. . ."

[45] In following *Simpson*, it is open to a Review Tribunal to sift through the relevant facts, assess the quality of the evidence, determine what evidence, if any, it might choose to

accept or disregard, and to decide on its weight. A Review Tribunal is permitted to consider the evidence before it and attach whatever weight, if any, it determines appropriate and to then come to a decision based on its interpretation and analysis of the evidence before it. The Review Tribunal was not required to refer to all of the evidence before it, even if the Applicant feels that the evidence would have been persuasive in his favour.

[46] On an aside, I note that the Review Tribunal made reference to the Applicant's post-MQP earnings, but did not specifically address how those earnings impacted any considerations of the Applicant's disability as being severe. The Applicant's earnings in 2003 and 2004 exceeded $37,000 and $32,000 respectively. It seems implicit in the decision of the Review Tribunal that it found that the Applicant engaged in a substantially gainful occupation after his MQP, i.e. the Applicant would be hard-pressed to state that those earnings were otherwise, particularly as the evidence also indicates and the Review Tribunal found that the Applicant worked full-time hours and had good attendance from April 1, 2003 to July 31, 2004. The Applicant had also been offered a second contract with the employer when the first ended in July 2004. The Review Tribunal was entitled to have found that the Applicant engaged in a substantially gainful occupation after his MQP, as there was an evidentiary foundation upon which it could make those findings.

[47] In his letter dated May 25, 2010, the Applicant stated that he had been last gainfully employed in 2005. In his Questionnaire dated May 25, 2010, the Applicant stated that he could no longer work as of January 1, 2000. Both the January 1, 2000 and 2005 dates fall after the MQP. It is unclear to me whether the Review Tribunal or the Respondent questioned the Applicant and sought any clarification on these particular points.

[48] If the Applicant is requesting that we re-assess the 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 leave application is not an opportunity to re-assess the evidence or to re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan.*

[49] I find that there is no arguable ground that the Review Tribunal made an error in failing to properly consider whether he was involved in substantially gainful employment.

b. Expert Opinion and Witnesses' Testimony

[50] The Applicant submits that the Review Tribunal failed to consider or refer to critical medical and expert evidence, as well as the evidence of family and close friends, when determining whether the Applicant's disability is severe and prolonged.

[51] The Applicant was particularly concerned that the medical report dated February 2, 2011 of Dr. Ford had not been included in the file materials early on. If I have understood the Applicant correctly, he contends that the Review Tribunal had insufficient opportunity to consider Dr. Ford's report, which he submits was critical to the determination of whether his disability is severe.

[52] I note once more that the Review Tribunal in fact referred to Dr. Ford's report of February 2, 2011 at paragraph 35 of its decision.

[53] In my view, even if Dr. Ford's report of February 2, 2011 had arrived late to the file, the Review Tribunal had all of the records available for review and consideration at any time following the hearing, in its deliberations and ultimately in coming to a decision.

[54] While the Applicant is of the position that the Review Tribunal should have given greater consideration to some of the medical and expert evidence, as well as the evidence of family and close friends, he does not specify what particular evidence (other than Dr. Ford's medical report of February 2, 2011) should have been given greater consideration by the Review Tribunal. If an Applicant is seeking leave, he should be more specific about what evidence he posits was overlooked.

[55] That said, as stated above, it was open to the Review Tribunal to assess the quality of the evidence and determine what evidence, if any, it chose to accept and what weight it might attach to that evidence, in coming to a decision. The Review Tribunal was not required to refer to each and every piece of evidence which led to its decision. The Review Tribunal noted that there were numerous medical reports in the hearing file and that it had

reviewed all of them in detail. The Review Tribunal briefly summarized many of the medical reports. The Review Tribunal found that there was very little evidence that stated exactly what the Applicant's disability was at the time of his MQP in 1988.

[56] I find that there is no arguable ground that the Review Tribunal made an error in failing to properly consider the expert opinion and witnesses' testimony.

Breach of Natural Justice - Systemic Discrimination and Unfair Result

[57] The Applicant does not state outright that the Review Tribunal failed to observe a principle of natural justice or that he did not receive a fair hearing, but he submits that the *Canada Pension Plan* is discriminatory, as anyone aged 21 or under is disentitled from receiving any disability benefits. This submission is academic and has no particular relevance to the Applicant, and I need not consider it for the purposes of this leave application.

[58] The Applicant submits that the result of the decision is unfair and that he ought to be entitled to disability benefits as he contributed to the Canada Pension Plan for six years.

[59] The Federal Court of Appeal in *Miceli-Riggins v. Attorney General of Canada*, 2013 FCA 158 examined the objectives of the *Canada Pension Plan.* The Court stated:

> [69] … The *Plan* is not supposed to meet everyone's needs. Instead, it is a contributory plan that provides partial earnings-replacement in certain technically-defined circumstances. It is designed to be supplemented by private pension plans, private savings, or both. See *Granovsky v. Canada (Minister of Employment and Immigration*), 2000 SCC 28 (CanLII), 2000 SCC 28 at paragraph 9, 2000 SCC 28 (CanLII), [2000] 1 S.C.R. 703.
>
> [70] Indeed, it cannot even be said that the *Plan* is intended to bestow benefits upon demographic groups of one sort or another. Instead, it is best regarded as a contributory-based compulsory insurance and pension scheme designed to provide some assistance – far from complete assistance – to those who satisfy the technical qualification criteria.
>
> [71] Like an insurance scheme, **benefits are payable on the basis of highly technical qualification criteria**.
>
> . . .

[74] In the words of the Supreme Court,

> The *Plan* was designed to provide social insurance for Canadians who experience a loss of earnings due to retirement, disability, or the death of a wage-earning spouse or parent. It is not a social welfare scheme. It is a contributory plan in which **Parliament has defined both the benefits and the terms of entitlement**, including the level and duration of an applicant's financial contribution.
>
> (*Granovsky*, *supra* at paragraph 9.) (my emphasis)

[60] Disability benefits are not available to everyone who suffers from a disability. It is clear that an applicant must meet certain requirements to qualify for disability benefits under the *Canada Pension Plan*. The fact that the Applicant made valid contributions to the Canada Pension Plan is alone of no consequence, nor is the impact of the decision of the Review Tribunal on the Applicant and his family, as there are highly technical requirements he had to meet to qualify for disability benefits. The Review Tribunal found that the Applicant had not met those requirements. The *Canada Pension Plan* does not permit a Review Tribunal to consider the impact its decisions may have on any of the parties, nor does it confer any discretion upon a Review Tribunal to consider other factors outside of the *Canada Pension Plan* in deciding whether an applicant is disabled as defined by that Act. Hence, it cannot be said that the Review Tribunal failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

CONCLUSION

[61] For the reasons expressed above, the Application is refused.

Janet Lew
Member, Appeal Division