

Citation: *B. D. M. v. Minister of Employment and Social Development*, 2014 SSTAD 134

Appeal No. AD-13-50

BETWEEN:

B. D. M.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: June 3, 2014

DECISION

[1] The Tribunal grants Leave to appeal to the Appeal Division of the Social Security Tribunal.

BACKGROUND

[2] The Applicant seeks Leave to appeal the decision of the Review Tribunal issued to the parties on January 24, 2013. The Review Tribunal determined that a *Canada Pension Plan (CPP)*, disability pension was payable to the Applicant beginning April 2012.

[3] The Applicant submitted the Application requesting Leave to Appeal, (“the Application”), to the Social Security Tribunal, (“SST”) within the time limit set out for the filing of such Applications under the *Department of Employment and Social Development Act (DESD Act)*.

GROUND OF THE APPLICATION

[4] The Applicant challenges the date of the commencement of the disability payments. He argues that The Review Tribunal erred when it found that he became disabled in December 2011. He states the correct date of disability is April 2011 and, therefore, his disability payments ought to have commenced in September 2011 and not in April 2012 as the Review Tribunal found. In his submission, he is owed eight months of CPP disability pension payments.

ISSUE

[5] The Tribunal must decide if the appeal has 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.” Clearly, there is no automatic right of

appeal. An Applicant must first seek and obtain leave to bring his or her appeal to the Appeal Division, which must either grant or refuse leave.

[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.”

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

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

ANALYSIS

[10] On an Application for Leave to Appeal the Applicant has a first, and lower, hurdle to meet than the one that must be met on the hearing of the appeal on the merits. However, the Applicant must show some arguable case¹ or arguable ground upon which the proposed appeal might succeed is needed if leave is to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[11] A CPP disability pension having been found payable to the Applicant, the only issue in this Application and Appeal is the question of quantum. The Applicant argues the Review Tribunal erred when it approved payment of the disability pension as of April 2012. He takes the position that his payments should commence eight months earlier.

¹ *Calihoo v. Canada (Attorney General)*, [2000] FCJ No. 612 TD at para. 15.

[12] In paragraph 33 of the decision, the Review Tribunal writes,

[33] The Tribunal finds that the Appellant had a severe and prolonged disability in December 2011, when the Appellant had completed his university programme, had opportunity for suitable work which he did not feel he could do, and his orthopaedic surgeon reported to him that after extensive discussion with her colleagues, it was concluded that there was not much to be offered with surgery, especially with no formal diagnosis being established. According to section 69 of the CPP payments start four months after the date of disability. Payments start as of April 2012.

[13] The Applicant has interpreted the words, “the Tribunal finds that the Appellant had a severe and prolonged disability in December 2011, when the Appellant completed his university programme”, as meaning that the Review Tribunal concluded that he finished his MLA degree in December 2011. He states he completed his studies in April 2011. In so doing, he has expressly stated that the Review Tribunal made its decision on an erroneous finding of fact. In the Tribunal’s view, his argument raises an arguable case as it appears the Review Tribunal may have linked the date of disability to the date the Applicant completed his university programme. This, according to the Application, is an issue. Leave is granted on this basis.

CONCLUSION

[14] The Application for leave to appeal is allowed.

Hazelyn Ross

Member, Appeal Division