

Citation: *Minister of Human Resources and Skills Development v. S. D.*, 2014 SSTAD 145

Appeal No. AD-14-225

BETWEEN:

Minister of Human Resources and Skills Development

Applicant

and

S. D.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: June 9, 2014

DECISION

[1] The Social Security Tribunal (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 General Division dated January 20, 2014. The General Division found that the Respondent had a severe and prolonged disability in July 2010 and calculated that disability benefits started as of November 2010. The Appellant does not contest the granting of disability benefits to the Respondent, but submits that the General Division erred in law by exceeding the maximum retroactivity of payments of disability pension permitted under the *Canada Pension Plan*.

[3] The Applicant filed an Application for Leave to Appeal and Notice of Appeal (the “Application”) on May 6, 2014, within the time permitted under the *Department of Employment and Social Development (DESD) Act*.

ISSUE

[4] Does this appeal have a reasonable chance of success?

THE LAW

[5] 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”.

[6] 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”.

[7] 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.

[8] I am required to determine whether any of the Applicant's reasons for appeal fall within any of the grounds of appeal and whether any of them have a reasonable chance of success, before leave can be granted.

APPLICANT'S SUBMISSIONS

[9] The Minister of Human Resources and Skills Development received the Respondent's Application for Disability Benefits in December 2011. The Applicant submits that the earliest date that the Respondent could be deemed disabled was September 2010, fifteen months prior to the date the application for disability benefits was received by the Applicant. The Applicant further submits that the earliest date that payment of disability benefits could therefore commence was four months later, which in this case would be January 2011.

RESPONDENT'S SUBMISSIONS

[10] The Respondent contacted the Tribunal on May 21, 2014, after receiving a copy of the Application. The Tribunal responded to his enquiries regarding the Application and reportedly advised that he did not oppose the Application for leave, or the Applicant's position that the commencement of payment of disability benefits is subject to a maximum retroactivity.

ANALYSIS

[11] 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 Human Resources Development)*, [1999] FCJ No. 1252 (FC).

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

[13] The Applicant submits that the General Division erred in failing to apply subsection 42(2)(b) of the *Canada Pension Plan* and subsection 43(1) of the *Canada Pension Plan Regulations*, in determining when payment of disability benefits should commence.

[14] The issue as to whether the General Division may have erred in law by failing to identify and apply the correct statutory provisions in determining the commencement of disability benefits raises a ground upon which the appeal might have a reasonable chance of success. As such, I allow the application for leave to appeal.

CONCLUSION

[15] The Application is granted.

Janet Lew

Member, Appeal Division