

Citation: *F. K. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 141

Appeal No: AD-13-1091

BETWEEN:

**F. K.**

Appellant

and

**Minister of Human Resources and Skills Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division – Appeal Decision**

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SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

HEARING DATE: June 6, 2014

TYPE OF HEARING: On the Written Record

DATE OF DECISION: June 27, 2014

## **DECISION**

[1] The appeal is dismissed.

## **INTRODUCTION**

[2] On August 21, 2013, the General Division of the Social Security Tribunal (the Tribunal) summarily dismissed the Applicant's application and determined that a *Canada Pension Plan* (the "CPP") disability pension was not payable.

[3] The Appellant originally filed an Appeal of that decision with the Appeal Division of the Tribunal on October 1, 2013.

[4] The hearing of this appeal was determined on the written record for the reasons given in the letter to the parties dated February 11, 2014. This letter invited both parties to make further written submissions on or before March 28, 2014. No submissions were filed with the Tribunal by either party.

## **THE LAW**

[5] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

- a) Be under 65 years of age;
- b) Not be in receipt of the CPP retirement pension;
- c) Be disabled; and
- d) Have made valid contributions to the CPP for not less than the Minimum Qualifying Period (MQP).

[6] The calculation of the MQP is important because a person must establish a severe and prolonged disability on or before the end of the MQP.

[7] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is

incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

[8] 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.

[9] Subsection 59(1) of the DESD Act provides:

The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

## **ISSUE**

[10] The Tribunal must decide whether the Appeal should be dismissed, the matter referred back to the General Division, or the General Division decision changed.

## **SUBMISSIONS**

[11] The Appellant submitted that her appeal should succeed because:

- a) The matter was decided at the General Division without an opportunity for her to present her case;

- b) She was prevented from working and contributing to the CPP because her child died of cancer; and
- c) The CPP provisions should be changed to offer help to people other than those who have contributed to the CPP for all of their lives.

[12] The Respondent made no submissions.

## **ANALYSIS**

[13] The Appellant must prove on a balance of probabilities that her appeal should succeed. The DESD Act sets out very narrow grounds of appeal. Unless the Appellant's arguments fall within the parameters of the DESD Act, her appeal must fail.

[14] The Appellant argued that her claim was dismissed at the General Division without her having an opportunity to present her case. The General Division decision states that both parties were given written notice that the application would be summarily dismissed, and provided with a reasonable time to file written submissions. Neither party did so. Therefore, I find that this ground of appeal fails.

[15] The Appellant also argued that she did not meet the contribution requirements of the CPP because she did not work due to her son's death from cancer. While this is a tragedy, I have no ability to change the CPP to grant a CPP disability pension to someone who has not met the statutory contribution requirements. This ground of appeal also fails.

[16] Finally, the Appellant argued that the CPP should be changed so that help can be provided to those who have not made lifelong contributions to the Plan. I have no ability to do this. The CPP does not permit me to make any decisions on a discretionary basis, nor to grant relief to those who do not meet the specific contribution requirements set out in the legislation. Any changes to the CPP to permit this would have to be made by Parliament. This ground of appeal also fails.

## **CONCLUSION**

[17] The appeal is dismissed for the reasons set out above.

*Valerie Hazlett Parker*

Member, Appeal Division