

Citation: *Minister of Employment and Social Development v. H. B.*, 2015 SSTAD 91

Appeal No. AD-14-589

BETWEEN:

Minister of Employment and Social Development

Appellant

and

H. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Leave to Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Hazelyn Ross

DATE OF DECISION: January 22, 2015

DECISION

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

INTRODUCTION

[2] On August 11, 2014, the General Division of the Social Security Tribunal, (the Tribunal), determined that a *Canada Pension Plan* disability pension was payable to the Respondent. The Tribunal determined that the Respondent became disabled in November 2008 and ordered that her disability benefits should commence as of March 2009.

[3] While not disputing the finding that the Respondent is disabled within the meaning of paragraph 42(2)(a) of the *Canada Pension Plan*, (CPP), the Applicant has filed an application for leave to appeal, (the Application), with the Appeal Division of the Tribunal. The Applicant challenges the Tribunal's finding on the date on which the Respondent became disabled. The Applicant contends that the Tribunal erred when it determined that the Respondent is to be deemed disabled as of November 2008.

ISSUE

[4] The Tribunal must decide whether the appeal has a reasonable chance of success.

THE LAW

[5] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development (DESD) Act* states "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".

SUBMISSION

[7] In support of the Application, the Applicant submitted that it was an error of law to deem the Respondent disabled as of November 2008, a date which relates to the Respondent's initial application for a CPP disability benefit. The Respondent further submits that the Tribunal acted outside of its jurisdiction when it found the deemed date of disability to be November 2008. The Applicant contends that as the Respondent did not contest the refusal of her original application for CPP benefits beyond the reconsideration stage, the only application that was properly before the Tribunal was the Respondent's second application made in July 2012. Accordingly, the earliest the Tribunal could deem the Respondent to be disabled would be April 2011, or 15 months before the Tribunal received the July 2012 application. Therefore, the Respondent's CPP benefits are properly commenced as of August 2011.

ANALYSIS

[8] An Application for Leave to Appeal presents a first, and lower, hurdle to meet than the one that must be met on the hearing of the appeal on the merits. The test is whether there is some arguable ground upon which the proposed appeal might succeed. *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[9] It is acknowledged that the Tribunal, being a creature of statute, can exercise only that jurisdiction granted to it by its enabling statute. Paragraph 42(2)(b) of the CPP provides for when an Applicant for disability benefits is to be deemed disabled.

- b) A person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person - including a contributor referred to in subparagraph 44(1)(b)(ii) - be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made. (S.C. 1992, c. 1, s. 23; 2009, c. 32, s. 31.)

[10] In the instant case, the question to be decided is “what is the application in respect of which the Tribunal made its determination.” The Tribunal finds that the Applicant has raised an arguable case that the relevant application is the application of July 2012.

[11] Further, based on the statutory provision, the Tribunal is satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[12] The Application is granted.

[13] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Hazelyn Ross

Member, Appeal Division