

Citation: *G. H. v. Minister of Employment and Social Development*, 2015 SSTAD 135

Appeal No: AD-15-11

BETWEEN:

G. H.

Applicant
(Respondent by Cross-Application)

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent
(Appellant by Cross-Application)

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

SOCIAL SECURITY TRIBUNAL MEMBER: Valerie Hazlett Parker

DATE OF DECISION: February 3, 2015

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal is granted.

INTRODUCTION

[2] The Applicant applied for a *Canada Pension Plan* disability pension in December 2009. She claimed that she was disabled by mental illness and associated disorders. The Respondent denied her claim initially and upon reconsideration. She appealed to The Office of the Commissioner of Review Tribunals. Pursuant to the *Jobs, Growth and Long-term Prosperity Act*, this appeal was transferred to the General Division of the Social Security Tribunal on April 1, 2013.

[3] On October 21, 2014 the General Division decided that the Applicant was disabled. The General Division decision stated that the Applicant was disabled in December 2008. It also stated that because she applied for the CPP disability pension in April 2012, pursuant to the provisions of the CPP governing retroactive awards, the Applicant was deemed to be disabled in January 2011.

[4] Both parties filed applications for leave to appeal from this decision. I held a pre-hearing teleconference. During this teleconference, the parties agreed that the Claimant's application for leave to appeal would be considered the application for leave to appeal and she would be referred to as the Applicant. The Minister of Employment and Social Development's application for leave to appeal would be considered a cross-application for leave to appeal, and it would be referred to as the Respondent.

[5] The Applicant filed a second application for a *Canada Pension Plan* (CPP) disability pension in 2013. This application was held in abeyance pending the decision on the 2009 application.

ANALYSIS

[6] In order to be granted leave to appeal, the Applicant must present some arguable ground upon which the proposed appeal might succeed: *Kerth v. Canada (Minister of Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has also found

that an arguable case at law is akin to determining whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 4, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[7] Section 58 of the *Department of Employment and Social Development Act* sets out the only grounds of appeal that can be considered to grant leave to appeal from a decision of the General Division (see the Appendix to this decision). I must therefore decide if the Applicant or the Respondent has presented a ground of appeal that has a reasonable chance of success on appeal.

[8] In this case, both parties made similar arguments to be granted leave to appeal. They each contended that the Applicant had not made an application for a CPP disability pension in 2012. The correct date of her application was December 2009. As such, the General Division conclusion that she was disabled as at December 2008 should remain. It is not barred by the retroactivity provisions of the CPP and the General Division erred in so concluding.

[9] I agree with the arguments made by counsel for both parties. There was no application for CPP disability pension made in 2012. Therefore, the General Division erred and this argument has a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is granted for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

APPENDIX

Department of Employment and Social Development Act

58. (1) The only grounds of appeal are that

(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.

(2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.