

Citation: *N. H. v. Minister of Employment and Social Development*, 2015 SSTAD 597

Date: May 13, 2015

File number: AD-15-150

APPEAL DIVISION

Between:

N. H.

Appellant

and

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

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

Decided on the record on May 13, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for and was granted a *Canada Pension Plan* retirement pension with a commencement date of December 2010. In August, 2012 the Applicant applied to have this retirement pension replaced with a *Canada Pension Plan* disability pension. The Respondent denied this application initially and after reconsideration because the application to replace the retirement pension with a disability pension was made after the time to do so had expired. The Appellant appealed this decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division summarily dismissed the appeal on March 6, 2015.

[2] The Appellant appealed this decision to the Appeal Division of the Social Security Tribunal. She argued that she still wished to pursue the appeal, and that she could not have applied sooner for the *Canada Pension Plan* (CPP) disability pension due to delays in receiving a diagnosis for her medical condition. The Respondent submitted that the standard of review to be applied in this case was that of reasonableness and that the General Division made no reviewable error. Therefore, it argued, the appeal should be dismissed.

[3] This appeal was decided on the written record after considering the following:

- a) The complexity of the issue under appeal.
- b) The information in the file, including the need for additional information.
- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.
- d) The nature of the issue in this appeal.
- e) The written submissions of the parties adequately addressed the legal issue in this appeal.

ANALYSIS

[4] The Appellant made no submissions regarding what standard of review should be applied to the General Division decision. The Respondent submitted that in this case the standard of review that should be applied is one of reasonableness. The leading case on this is *Dunsmuir v. New Brunswick* 2008 SCC 9. In that case, the Supreme Court of Canada concluded that when reviewing a decision on questions of fact, mixed law and fact, and questions of law related to the tribunal's own statute, the standard of review is reasonableness; that is, whether the decision of the tribunal is within the range of possible, acceptable outcomes which are defensible on the facts and the law. I agree with the Respondent that this is the standard of review that should be applied in this case.

[5] The *Department of Employment and Social Development Act* governs the operation of this Tribunal. Section 58 of the *Act* sets out the only grounds of appeal that may be considered. Section 59 sets out the remedies that can be granted on an appeal (see the Appendix to this decision). Therefore, I must decide if the General Division decision contains an error under the *Department of Employment and Social Development Act* that renders the General Division decision unreasonable.

[6] The facts in this matter are not in dispute. The Appellant began to receive CPP retirement pension benefits in December 2010. She applied for CPP disability pension benefits in August 2012, approximately 20 months later. The General Division made no errors of fact.

[7] The General Division also correctly set out the relevant provisions of the CPP and the *Canada Pension Plan Regulations* which, together, state clearly that a retirement pension cannot be replaced by a disability pension when the disability pension application is made more than 15 months after the retirement pension commenced. The Appellant did not allege that the General Division misstated the law or applied the law incorrectly to the facts before it. The General Division made no error in law.

[8] The Appellant did not contend that any of the principles of natural justice had been breached.

[9] I accept the Respondent's submission that the only possible conclusion in this case, in law, was that the Appellant's claim must be dismissed. The Appellant applied for a disability pension more than fifteen months after her retirement pension commenced. Consequently she could not have her retirement pension replaced by a disability pension. While I accept that the Appellant did not have a diagnosis of her condition prior to the application date, the *Canada Pension Plan* does not provide any exceptions for the time within which applications must be made.

[10] I have sympathy for the Appellant's position. This Tribunal, however, was created by statute. As such, it has no authority to grant relief to any claimant based on compassion. The Tribunal must apply the CPP as it is written. This is what the General Division did. The General Division decision is reasonable.

[11] Therefore, this appeal must be dismissed.

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.

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

59. (1) 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.