

Citation: *A. M. v. Minister of Employment and Social Development*, 2015 SSTAD 724

Date: June 11, 2015

File number: AD-15-281

APPEAL DIVISION

Between:

A. M.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on June 11, 2015

REASONS AND DECISION

DECISION

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

INTRODUCTION

[2] On March 5, 2015, the General Division of the Social Security Tribunal of Canada, (the Tribunal), determined that the Applicant ceased to be disabled within the meaning of the *Canada Pension Plan*, (CPP), as of October 1, 2007. The Applicant has filed an application for leave to appeal, (the Application), with the Appeal Division of the Tribunal.

GROUND OF THE APPLICATION

[3] The Applicant relies on paragraph 58(1)(a) of the *Department of Employment and Social Development (DESD) Act*. She argues that the General Division erred in law by failing to reassess the amount claimed by the Respondent. The Applicant also indicates that she is relying on paragraph 58(1)(c) of the DESD Act, namely that the General Division based its decision on an erroneous finding of fact without regard for the material before it.

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 DESD Act provide that, “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.”

ANALYSIS

[7] The General Division found that the Applicant ceased to be disabled effective October 1, 2007, when she became the majority shareholder in a delivery company, X X. The Member also found that the Applicant, through the company, worked as a lease courier for GC Forward Express from September 2007 to March 2010. While the General Division Member made this conclusion, she did not address the issue of quantum of repayment that was required of the Applicant. Counsel for the Applicant submits that this is both an error of law and an erroneous finding of fact. Counsel submits that the Member ought to have ruled that the Applicant had made a repayment of \$7,932.44.

[8] The Tribunal finds that in the circumstances of this case, the General Division did not err. The General Division was required to assess whether or not the Respondent had established that the Applicant retained work capacity and, if so, the date that her disability benefits should cease. The General Division found that the Applicant retained work capacity as of October 1, 2007, which is also the date on which her benefits should cease.

[9] The argument that the General Division Member ought to have determined the quantum of the Applicant's repayment is not supported by the case law. In any event, the Tribunal finds that in this case, this was not something that the General Division could do as there is some question as to what repayments the Applicant did, in fact, make.

[10] It appears that the Applicant did not have objective evidence that she returned the benefits that had been paid to her in July 2009 and August 2009. Thus, the quantum of repayment is still to be determined. This is a task for the Applicant and the Respondent.

[11] The Application is refused.

Hazelyn Ross
Member, Appeal Division