

Citation: *A. Q. v. Minister of Employment and Social Development*, 2015 SSTAD 894

Date: July 21, 2015

File number: AD-15-373

APPEAL DIVISION

Between:

A. Q.

Applicant

and

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

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on July 21, 2015

DECISION

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

INTRODUCTION

[2] The Applicant was awarded a *Canada Pension Plan* (CPP) disability benefit effective May 2003. Citing his return to the workforce, the Respondent ceased payment of the benefit on January 1, 2010. The Respondent also assessed the Applicant for repayment of disability benefits for the period July 1, 2004 to December 31, 2009. The Respondent maintained its decision upon the Applicant's request for reconsideration and upon appeal to the Tribunal.

[3] On March 5, 2015, the General Division of the Social Security Tribunal of Canada (the Tribunal), determined that the Applicant was not entitled to a disability pension as he ceased to be disabled within the meaning of the CPP as of July 1, 2004. The Applicant has filed an application for leave to appeal the decision (the Application), with the Appeal Division of the Tribunal.

GROUND OF THE APPLICATION

[4] The Applicant submitted that the General Division decision breached the provisions of subsection 58(1) of the *Department of Employment and Social Development (DESD) Act* in that the General Division breached natural justice and its decision contained errors of law and erroneous findings of fact.

ISSUE

[5] Does the appeal have a reasonable chance of success?

THE LAW

[6] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.¹ To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. The Federal Court of Appeal has equated a reasonable chance of success to an arguable case: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[7] The Grounds of Appeal are set out in section 58 of the DESD Act.² These are the only grounds on which an Applicant may appeal a decision of the General Division.

[8] The applicable legislative provision concerning cessation of a disability pension is found at CPP subsection 70(1), which provides that a disability pension ceases to be payable with the payment,

- (a) for the month in which the beneficiary ceases to be disabled.

[9] CPP subsection 70.1(1) provides for reinstatement of a disability pension. The provision states,

- (1) Subject to this section, a person who has ceased to receive a disability pension because they have returned to work is entitled to have that disability pension reinstated if, within two years after the month in which they ceased to receive the disability pension, they become incapable again of working.

¹ Sections 56 to 59 of the *Department of Employment and Social Development Act*, (DESD Act). Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing 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.”

² **58(1) Grounds of Appeal –**

- 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.

ANALYSIS

[10] Two questions were before the General Division. The first question was whether the Respondent had properly ceased payment of the disability pension and secondly, whether the disability pension should be reinstated. In both cases the General Division found against the Applicant.

[11] In the Application, the Applicant makes much of the same arguments that were made at the hearing, namely that he had been open about the fact that he was operating a small business; that there had been no monitoring in the nature of the reporting that was required for the Employment Insurance scheme; that had action been taken sooner the amount of overpayment would be lessened; that he was being treated unfairly. The Tribunal finds that while the Applicant uses the language of the statute, the facts on which he bases his submissions do not relate to any of the grounds of appeal.³

[12] For example, while the Applicant submits that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, he has not shown how the General Division achieved this. He states that the “fact that I ‘should have known’ that I didn’t qualify for CPP disability, the fact that Canada Revenue Agency reported the issue to CPP disability, even though my CPP T-5’s were sent in with my business taxes (sole proprietorship), why isn’t the CRA at fault? I wasn’t hiding anything!! As a taxpayer I should demand better understanding of government programs, but no I’ll pay for incompetence instead!!” And the Applicant goes on to argue that “so it is safe to say that ‘the General Division failed to observe the principle of natural justice’”. In the Tribunal’s view, these statements do not establish a breach of natural justice. Leave will not be granted in this regard.

[13] The Tribunal comes to a similar conclusion with respect to the errors of law that the Applicant submitted were committed by the General Division. The Applicant stated that he did not feel that the General Division understood or considered his position, thereby committing an error of law. He states:

³ See the Reasons for Leave to Appeal that the Applicant provided in Box C of the Request for Leave to Appeal.

“I felt that my representation of my plea had no merit in the case whatsoever, and my rights as a taxpayer and a citizen of this country were violated for a programme that is at fault of misguidance and negligence of what qualifies a (disabled) person who's paid into the program a fair appeal and the follow up and education of who qualifies.”

[14] The Tribunal is not persuaded that the Applicant's statement of his feelings demonstrate that the General Division committed an error of law. Accordingly, the Tribunal finds that these submissions do not relate to a ground of appeal for which there is a reasonable chance of success.

[15] The Applicant also submitted that 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. In support of this submission, the Applicant offered the following rationale:

fact one - I did not know CPP disability law and its requirements (grey areas) at the time or anytime after I received benefits (until I was cut off from benefits)

fact two - CPP disability's incompetence of "checking up" on its beneficiaries (treat it like E.I)

fact three - C.R.A's flagging and reporting of the income (5 years later) there's (*sic*) no mention of fault towards them.

In a technological age, why isn't there a computer generated flagging system?

fact four - they knew about my business in section 7 – self-employed in the questionnaire (see att.) I filled out, where was the follow up?

[16] In the Tribunal's view the Applicant's submissions do not support a finding that the General Division decision is based on erroneous findings of fact, however made. The undisputed facts were that the Applicant applied for and received a CPP disability payment. He commenced a rust-proofing business after he began to receive CPP disability payments. The Applicant had substantial earnings during the time he operated the business, which he did for about five years. The Applicant filed income tax returns and is to be taken to know that he had to declare his income from all sources, which he apparently did. He did not become disabled again within the two-year period provided for in the legislation. The Tribunal finds that in these circumstances it was not unreasonable for the General Division to conclude that the Applicant knew or ought to have known that he had become disentitled to a CPP disability pension.

Accordingly, the Tribunal finds that the General Division decision is not based on erroneous findings of fact that the General Division made in a perverse or capricious manner or without regard for the material before it.

CONCLUSION

[17] The Applicant seeks leave to appeal on the basis that the General Division breached the provisions of CPP subsection 58(1). In light of the foregoing the Tribunal finds that the Applicant's submissions are not supported. Accordingly, the Tribunal is not satisfied that the appeal would have a reasonable chance of success.

[18] The Application is refused.

Hazelyn Ross
Member, Appeal Division