

Citation: *Minister of Employment and Social Development v. R. D.*, 2015 SSTAD 972

Date: August 12, 2015

File number: AD-15-319

APPEAL DIVISION

Between:

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

Applicant

and

R. D.

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Respondent applied for a *Canada Pension Plan* disability pension. She claimed that she was disabled by back pain and other conditions. She stopped working in 2008. The Appellant denied the application initially and after reconsideration. The Respondent appealed 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*.

[2] The General Division held a videoconference hearing and on March 4, 2015 allowed the appeal, granting the Respondent the disability pension. The Appellant applied for leave to appeal to the Appeal Division, and argued that the General Division erred in law when it determined the date that the disability pension should begin to be paid to the Respondent.

[3] The Respondent filed no materials.

ISSUE

[4] 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 concluded that an arguable case at law is akin to whether legally an applicant has a reasonable chance of success: *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41, *Fancy v. v. Canada (Attorney General)*, 2010 FCA 63.

[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 to grant leave to appeal a decision of the General Division (the section is set out in the Appendix to this decision). Therefore, I must decide if the Appellant has presented a ground of appeal under section 58 of the Act that has a reasonable chance of success on appeal.

ANALYSIS

[6] The Respondent is disabled under the *Canada Pension Plan* (CPP). The issue on appeal is whether the General Division considered all of the relevant sections of the CPP when it decided what date the disability pension should begin to be paid to the Respondent. These sections are set out in the Appendix to this decision.

[7] The evidence before the General Division included the Respondent's Record of Earnings. This demonstrated that the Respondent had benefitted from a Division of Unadjusted Pensionable Earnings, although it is not clear when an application for this was approved by the Appellant. Accordingly, sections 55.2 and 69 of the CPP were relevant to determine what date the Respondent's pension payments could begin.

[8] Although the General Division decision considered section 69 of the CPP, it did not consider section 55.2 of the CPP which sets out when a CPP disability pension can begin to be paid in cases where there has been a Division of Unadjusted Pensionable Earnings.

[9] I am satisfied that not considering all of the relevant sections of the CPP was an error in law. This ground of appeal therefore has a reasonable chance of success on appeal. Leave to appeal is granted.

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

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.

Canada Pension Plan

55.2(9) Where there is a division under section 55.1 [Division of Unadjusted Pensionable Earnings] and a benefit is or becomes payable under this Act to or in respect of either of the persons subject to the division for a month not later than the month following the month in which the division takes place, the basic amount of the benefit shall be calculated and adjusted in accordance with section 46 and adjusted in accordance with subsection 45(2) but subject to the division, and the adjusted benefit shall be paid effective the month following the month in which the division takes place but in no case shall a benefit that was not payable in the absence of the division be paid in respect of the month in which the division takes place or any prior month.

69. Subject to section 62, where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled ...