

Citation: *W. H. v. Minister of Employment and Social Development*, 2015 SSTAD 1059

Appeal No. AD-15-852

BETWEEN:

W. H.

Applicant

and

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

Respondent

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

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: September 9, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated November 12, 2014. The hearing was held by way of questions and answers. The General Division determined that the Applicant had not made valid contributions for the years 2005 and 2006 and therefore calculated his minimum qualifying period to be December 31, 2002. The General Division also determined that the Applicant was not eligible to receive a disability pension under the *Canada Pension Plan*, as it was not satisfied that his disability was “severe or prolonged” on or before his minimum qualifying period of December 31, 2002.

[2] Upon contacting the Social Security Tribunal and learning that it had not received his initial leave application which he alleges was sent by registered mail in December 2014, the Applicant filed an application requesting leave to appeal on July 22, 2015. Ordinarily, an application filed after 90 days from the date on which the decision was communicated to an applicant would be considered late, but in this case, the Applicant alleges that he had initially mailed a leave application in December 2014. There is no evidence to indicate that he mailed a leave application then, but in the best interests of justice, I will nonetheless consider whether there is any merit to the leave application. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

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

SUBMISSIONS

[4] The Applicant submits that the General Division erred in calculating his minimum qualifying period, as it failed to consider contributions made by him to the Canada Pension Plan in the years 2005 and 2006. He included the Notices of Reassessment from Canada Revenue Agency, which state that he made contributions in the amount of \$569.25 in each of the two tax years.

[5] The Respondent has not filed any written submissions.

THE LAW

[6] Some arguable ground upon which the proposed appeal might succeed is needed for leave to be granted: *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC). The Federal Court of Appeal has determined that an arguable case at law is akin to determining whether legally an appeal has a reasonable chance of success: *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[7] Subsection 58(1) of the *Department of Employment and Social Development Act* sets out that the only grounds of appeal are the following:

- (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.

[8] I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success, before leave can be granted.

ANALYSIS

[9] The Applicant submits that the “argument that [he has] not paid enough years prior to [his] disability should not come into play”, as he made contributions to the Canada Pension Plan in each of the years 2005 and 2006. The Applicant submits that the General Division failed to consider contributions which he made to the Canada Pension Plan for the years 2005 and 2006. He submits that they qualify as valid contributions which would effectively change the minimum qualifying period.

[10] Subsection 44(2) of the *Canada Pension Plan* sets out five requirements for obtaining a disability pension. An applicant must:

- a) be between the ages of 18 and 64 inclusive;
- b) not be in receipt of a retirement pension;
- c) fall within the minimum contributory requirements of subsection 44(2) of the *Canada Pension Plan*;
- d) be determined to be disabled as defined in the *Canada Pension Plan, Canada Pension Plan*, by his or her minimum qualifying period, as defined by paragraph 42(2)(a); and
- e) continue to be disabled up until the final determination of the disability claim.

[11] Paragraph 44(2)(a) of the *Canada Pension Plan* requires an applicant to have made sufficient contributions to the *Canada Pension Plan*. The paragraph sets out the calculation of the minimum qualifying period in the case of a disability pension, and reads:

(2) *Calculation of minimum qualifying period in case of disability pension and disabled contributor's child's benefit* - For the purposes of paragraphs (1)(b) and (e),

- (i) A contributor shall be considered to have made contributions for not less than the minimum qualifying period only if the contributor has made contributions during the contributor's contributory period on earnings that are not less than the basic exemption, calculated without regard to subsection 20(2),
- (i) for at least four of the last six calendar years included wholly or partly in the contributor's contributory period or, where there are fewer than six calendar years included either wholly or partly in the contributor's contributory period, for at least four years, ...

(My emphasis)

[12] The General Division was aware that the Applicant had earnings for 2005 and 2006 (and 1985, for that matter), but it found that his earnings fell below the year's disability basic exemption for those years.

[13] The calculation of the minimum qualifying period refers to the “basic exemption”. Paragraph 44(2)(a) of the *Canada Pension Plan* section stipulates that any contributions to the Canada Pension Plan must not be less than the basic exemption. The amount of the basic exemption is defined by section 19 of the *Canada Pension Plan* as being the “Year’s Basic Exemption” as set out in section 20. For 2005, the year’s disability basic exemption was \$4,100. It increased to \$4,200 in 2006. The Applicant could only have made valid contributions to the Canada Pension Plan for disability purposes in 2005 if his earnings equaled or exceeded \$4,100, and in 2006, if his earnings equaled or exceeded \$4,200. If his earnings fell below these amounts, he could not have made valid contributions to the Canada Pension Plan.

[14] The Record of Earnings and the Notices of Reassessment show that the Applicant had no taxable income in each of the years 2005 and 2006. This fell below the year’s basic exemptions of \$4,100 and \$4,200 for 2005 and 2006, respectively. As the General Division found that the applicant’s earnings fell below the year’s disability basic exemption for each 2005 and 2006, it concluded that no valid contributions could have been made for those years. His contributions would have been refunded.

[15] Section 97 of the *Canada Pension Plan* makes it indisputable that the amount shown in the Record of Earnings is accurate and that it may not be called into question after four years have elapsed from the end of the year in which the entry was made. The Record is conclusively presumed to be accurate. The General Division properly relied on the Record of Earnings as conclusive that the Applicant did not have valid contributions to the Canada Pension Plan for the year 2005. It is immaterial that Canada Revenue Agency issued Notices of Reassessment for the tax years 2005 and 2006 in June 2009, as they would not have changed the Record of Earnings to show valid contributions to the Canada Pension Plan, where the earnings continued to be below the year’s basic exemption. Indeed, the Record of Earnings available to the General Division was current to June 11, 2010 (GT2).

[16] It cannot be said that the General Division failed to consider contributions to the Canada Pension Plan for the years 2005 and 2006, where there were none to be considered. I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[17] The application for leave to appeal is refused.

Janet Lew

Member, Appeal Division