

Citation: *Minister of Employment and Social Development v. G. G.*, 2015 SSTAD 1131

Date: September 24, 2015

File number: AD-15-866

APPEAL DIVISION

Between:

Minister of Employment and Social Development

Applicant

and

G. G.

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on September 24, 2015

DECISIONS

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada is granted. As well, the appeal is allowed.

INTRODUCTION

[2] On April 16, 2015 the General Division of the Social Security Tribunal of Canada, (the Tribunal), issued its decision finding that the Respondent had a severe and prolonged disability as described by s. 42 of the *Canada Pension Plan*, (CPP). Accordingly, she was entitled to a CPP disability pension. The Applicant seeks leave to appeal the decision (the Application).

GROUND OF THE APPLICATION

[3] The Applicant submitted that the General Division erred by basing 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.

ISSUES

[4] The Appeal Division of the Tribunal must decide whether the appeal has a reasonable chance of success. If leave is granted, the Appeal Division of the Tribunal must also decide whether the appeal should be allowed at the present stage and whether it should give the decision that the General Division should have given.

THE LAW

[5] 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 success². In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 as well as in *Fancy v. Canada*

¹ Sections 56 to 59 of the 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 The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

(Attorney General), 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case.

[6] There are only three grounds on which an appellant may bring an appeal. These grounds are set out in section 58 of the *Department of Employment and Social Development, (DESD), Act*. They are,

- (1) a breach of natural justice;
- (2) that the General Division erred in law; and
- (3) the General Division based its decision on an error of fact made in a perverse or capricious manner or without regard for the material before it.³

ANALYSIS

[7] In order to grant leave to appeal the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. This means that the Appeal Division must first find that, were the matter to proceed to a hearing,

- (a) at least one of the grounds of the Application relate to a ground of appeal; and
- (b) there is a reasonable chance that the appeal would succeed on this ground.

For the reasons set out below the Appeal Division is satisfied that this appeal would have a reasonable chance of success.

The Alleged Errors

[8] At paragraph 36 of the decision, the General Division deemed the Respondent disabled as of August 2011 with payment of her disability pension to commence as of December 2010. The Applicant submitted that these dates are incorrect, and that the General Division committed

³ **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; The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

an error of fact in relation to them. Counsel submitted that the Respondent's application for a CPP disability pension was received in October 2011⁴ and not November 2011 as the General Division concluded. Counsel for the Applicant argues that the error has the impact of denying the Respondent one month of disability payment.

[9] By a letter dated July 7, 2015, the Applicant asked the General Division to amend its decision. However, the General Division maintained its decision.

[10] Given the potential impact on the Respondent and the fact that the Applicant was not only conceding the impact but had taken active steps to obviate any hardship to the Respondent, the Appeal Division issued the present decision without seeking submissions from the Respondent.

[11] The Applicant relies on the following:

The Application for disability pension carries two date stamps:

- One stamp appears on the first page of the application and is dated November 1, 2011. This stamp contains the following notation,
Service Canada
Nov. 01, 2011
RC 83 106 (GT1-17)
- A second date stamp that appears on the last page of the application. This stamp bears the following notation:
Received
SCC 3570
Oct. 27, 2011
Ajax, Ont. (GT1-20)

[12] Counsel for the Applicant submits that appearing beside the November 01, 2011 date stamp is the following hand-written notation: "see last page of dsb app, dsb rec'd on October 27, 2011, using that date as date of app".

⁴ At paragraph 36, the General Division states, "The application was received in November 2011; therefore the Appellant is deemed disabled in August 2010. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of December 2010".

[13] Counsel for the Applicant has exhibited a copy of the Application for Disability Benefits at Appendix A, Tab 1 of her submissions that bears this hand-written notation. Copy of the Application contained in the Tribunal Record does not carry this notation. (GT1-17)

[14] Notwithstanding the absence of the said hand-written notation on the copy of the Application in the Tribunal record, due to the fact that the Application does carry the two stamps identified by the Applicant, the Appeal Division is satisfied that, the Applicant has raised an arguable case.

[15] Accordingly, the Appeal Division grants the Application.

THE APPEAL

[16] Counsel for the Applicant asked the Appeal Division to not only grant the Application but also allow the appeal and to exercise its power under s. 59 of the DESD Act to give the decision that the General Division should have given, which is that the Respondent was disabled as of July 2010 with payment commencing four months later, in November 2010, pursuant to section 69 of the *CPP*.

[17] Given the circumstances of the case and the Appeal Division's finding that the Applicant has raised an arguable case; and also in light of the Tribunal's mandate to conduct proceedings as informally and quickly as possible as the circumstances and the considerations of fairness and natural justice permit, the Appeal Division is of the view that this is an appropriate case in which to grant leave, allow the appeal and exercise the jurisdiction granted in s. 59 of the DESD Act.

[18] Having examined the document in question and, also, having regard to the Applicant's submissions, the Appeal Division finds that, on a balance of probabilities, the Applicant first received the Application on October 27, 2011. In the view of the Appeal Division this is the only logical and plausible explanation for how the stamp came to be affixed to the document.

[19] The Appeal Division notes that the information on the two stamps differ, thus it is an open question as to where the stamps were affixed. In any event, the Appeal Division is of

the view that the only way the October stamp could have been affixed to the document is if it had been placed there by a Service Canada employee. Accordingly, the Appeal Division grants the appeal.

CONCLUSION

[20] The Application is granted and the appeal is allowed.

DECISION

[21] The Appeal Division exercises its jurisdiction under s. 59 of the DESD Act to give the decision the General Division should have given. Accordingly, it is the decision of the Appeal Division that, the application was received in October 2011; therefore pursuant to CPP ss. 42(2)(b) the Respondent is deemed disabled as of July 2010. Therefore, pursuant to CPP s. 69 payment of the disability pension commences effective November 2010, which is four months after the date the Respondent is deemed to be disabled.

Hazelyn Ross
Member, Appeal Division