

Citation: *R. O. v. Minister of Employment and Social Development*, 2015 SSTAD 1142

Date: September 28, 2015

File number: AD-15-980

APPEAL DIVISION

Between:

R. O.

Applicant

and

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

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Applicant applied for a *Canada Pension Plan* disability pension after he was in receipt of a *Canada Pension Plan* retirement pension. The Respondent denied the application initially and after reconsideration. The Applicant appealed to the General Division of the Social Security Tribunal of Canada. It appeared that the appeal was filed after the time to do so had expired. The General Division, on July 31, 2015, refused the Applicant's request to extend the time to file the appeal.

[2] The Applicant requested leave to appeal the decision that refused to extend the time to file the appeal. He argued that the "Department" erred as it did not consider his contributions to the *Canada Pension Plan* (CPP) in 2012, and that the appeal was not filed late.

[3] The Respondent filed no submissions.

ANALYSIS

[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 found 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 can be considered to grant leave to appeal a decision of the General Division (the section is set out in the Appendix to this decision). Hence, I must decide if the Applicant has presented a ground of appeal that falls within section 58 of the Act and has a reasonable chance of success on appeal.

[6] The Applicant first argued that the Tribunal erred as it did not consider his contributions to the CPP in 2012. He included with his Application Requesting Leave to Appeal a copy of his 2012 T4 which showed these contributions. The 2012 contributions are

relevant to this Tribunal only with respect to determining the date by which a claimant must be found to be disabled in order to receive the disability pension. However, the Applicant was in receipt of a CPP retirement pension when he applied for a CPP disability pension. The General Division decision correctly stated that in order for his retirement pension to be replaced by a disability pension, he must be found to be disabled under the CPP prior to when he began to receive the retirement pension. Therefore, it made no error in not specifically setting out what contributions the Applicant made to the CPP in 2011 or 2012. These contributions would not have impacted the decision that was reached. No ground of appeal is disclosed by this argument.

[7] The Applicant also argued that he did not file the appeal to the General Division after the time to do so had expired. It was not disputed that the Applicant received the reconsideration decision on January 16, 2014. The Applicant claimed that he filed an appeal with the Tribunal on March 3, 2014 and was told that this was incomplete on May 2, 2014. The documents required to complete the appeal application were filed with the Tribunal on May 29, 2014. This was more than 90 days after the reconsideration decision was communicated to the Applicant. The General Division was correct to conclude that the application was completed after the time to do so had expired.

[8] The General Division decision also correctly set out the law to be considered when deciding whether to extend the time for an appeal to be filed. It concluded that the Applicant had a continuing intention to appeal, a reasonable explanation for the delay and that the Respondent would not be prejudiced if the matter were to proceed.

[9] The General Division decision also concluded that the Applicant did not present an arguable case on appeal because he continued to work and that treatment for his condition did not begin until after he began to receive the retirement pension, which demonstrated that he had capacity to work at the relevant time. The General Division decision did not, however, consider that the fact that a disability pension claimant worked after the minimum qualifying period should not automatically preclude entitlement to a disability pension - *Stanziano v. Minister of Human Resources Development*, November 26, 2002, CP17926

(PAB). This may have been an error of law in the General Division decision. This is a ground of appeal that may have a reasonable chance of success on appeal.

CONCLUSION

[10] The Application Requesting Leave to Appeal to the Appeal Division is granted. A ground of appeal that falls under section 58 of the Act and that may have a reasonable chance of success on appeal has been presented.

[11] 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.