Citation: ***Minister of Employment and Social Development v. J. B.*****, 2015 SSTAD 1160**

Date: September 30, 2015

File number: AD-15-892

APPEAL DIVISION

Between:

Minister of Employment and Social Development

Applicant

and

J. B.

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Decided on the Record on September 30, 2015

DECISION

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

INTRODUCTION

[2] In a decision issued May 7, 2015, the General Division of the Social Security Tribunal of Canada (the Tribunal), found that the Respondent met the criteria for payment of a *Canada Pension Plan* (CPP) disability pension. The General Division Member found that the Respondent had a "severe and prolonged disability in March 2012 when Dr. Citron reported that he had chronic arm and back pains which caused him considerable pain and disability." (GD decision para. 48)

[3] The Applicant seeks leave to appeal the General Division decision, (the Application).

GROUNDS OF THE APPLICATION

[4] The Applicant submits that the General Division erred in fact and in law when it found, on a balance of probabilities, that the Respondent was incapable regularly of pursuing any substantially gainful occupation as of March 2012. The Applicant contends that March 2012 is after the date that the Respondent's minimum qualifying period (MQP) ended. In the Applicant's submission, the Respondent's MQP is December 31, 2011.

ISSUE

[5] The Tribunal must decide whether the appeal has 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

[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."

that the appeal would have a reasonable chance of success.[2] In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 as well as in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case.

[7] There are only three grounds on which an appellant may bring an appeal. These grounds are set out in section 58 of the DESD Act. They are,

(1) a breach of natural justice;

(2) 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

[8] In order to grant leave to appeal the Tribunal must be satisfied that the appeal would have a reasonable chance of success. This means that the Tribunal 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 Tribunal is satisfied that this appeal would have a reasonable chance of success.

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[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."

[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;

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.

The Alleged Errors

[9] Counsel for the Applicant submitted that the General Division committed an error of fact when it concluded that the Respondent's MQP was December 31, 2012. He submitted that the error arose because, while an updated Record of Earnings detailing the Respondent's contributions to the CPP had, in fact, been provided to the Tribunal in submissions, Counsel inadvertently referred to December 2012 as the MQP. Counsel for the Applicant further submitted that, contrary to the assertion at paragraph 7 of the decision that there had been no issue about the MQP, the issue had, in fact, been raised at the hearing and the MQP had been corrected and readjusted to December 31, 2011.

[10] As the General Division noted in its decision, "the calculation of the MQP is important because an applicant for a CPP disability pension must establish a severe and prolonged disability on or before the end of the MQP." Thus, it would be both an error of fact to find an incorrect MQP date as well as an error of law to award a CPP disability pension based on a finding of disability that arose post-MQP.

[11] In the circumstances, the Tribunal finds that the Applicant has raised an arguable case. Accordingly, the Tribunal grants the Application.

CONCLUSION

[12] The Application is granted.

Hazelyn Ross
Member, Appeal Division