

Citation: *D. P. v. Minister of Employment and Social Development*, 2015 SSTAD 1173

Date: October 1, 2015

File number: AD-15-1034

APPEAL DIVISION

Between:

D. P.

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 claimed that he was disabled by Chron's disease when he applied for a *Canada Pension Plan* disability pension. The Respondent denied his application initially and after reconsideration. The Applicant appealed to Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal of Canada on April 1, 2013 pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a videoconference hearing and on August 6, 2015 allowed his appeal. It found that the Applicant became disabled in September 2013.

[2] The Applicant requested leave to appeal to the Appeal Division of the Tribunal. He argued that he should have been found disabled in May 2011 when he was no longer able to work because of his disability.

[3] The Respondent filed no submissions on the leave to appeal application.

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). Therefore, I must decide if the Applicant has presented a ground of appeal that falls within section 58 of the Act and may have a reasonable chance of success on appeal.

[6] The Applicant argued that the General Division erred in concluding that his disability payments should begin in January 2014; payments should begin to be paid in 2011. From this, I

glean that the Applicant does not dispute the actual calculation of when payments should begin under section 69 of the *Canada Pension Plan*, but the date the General Division determined that he became disabled.

[7] The Applicant stopped working in May 2011 and then began treatment for Chron's Disease. He underwent three surgeries, the last being on January 22, 2012. There is no dispute that the Applicant's disability has not resolved despite surgery and other treatment. The General Division found as fact that the Applicant has suffered from constant symptoms since this last surgery (paragraph 51 of the decision). It decided that the Applicant became disabled under the *Canada Pension Plan* in September 2013 when his doctor wrote a report that summarized his symptoms, treatment and stated that his prognosis was very poor for pursuing any gainful employment.

[8] The General Division decision included a detailed summary of the Applicant's symptoms and their impact on his function in 2011, 2012 and 2013 as described in oral testimony and written evidence. The decision did not set out that the condition had worsened in 2013 when Dr. Chin wrote his report, or that the symptoms had changed. As the decision also stated that the Applicant suffered from constant symptoms after the surgery in 2012 the basis upon which the General Division found that the Applicant was disabled in September 2013 may be unclear. In *R. v. Sheppard*, 2002 SCC 26 the Supreme Court of Canada concluded that reasons for a decision should provide the parties with an understanding of why a decision was made. This decision may not have done so, which would be an error of law. I am satisfied that this is a ground of appeal that may have a reasonable chance of success on appeal.

CONCLUSION

[9] The Application is granted for the reasons set out above.

[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.