

Citation: *Minister of Employment and Social Development v. A. I.*, 2015 SSTAD 1412

Appeal No. AD-15-1282

BETWEEN:

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

Applicant

and

A. I.

Respondent

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

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

DATE OF DECISION: December 10, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated August 28, 2015. The General Division conducted a teleconference hearing on August 25, 2015 and determined that the Respondent has a severe and prolonged disability and that she had become disabled in April 2008. The General Division also determined that as the application for a Canada Pension Plan disability pension was received in September 2011, the Respondent was deemed disabled in January 2010 and accordingly, payment of a Canada Pension Plan disability pension would commence effective May 2010. Counsel for the Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on November 25, 2015, on the basis that the General Division erred in law. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

SUBMISSIONS

[2] The Applicant does not contest the finding of disability. However, counsel for the Applicant submits that the General Division erred with respect to the deemed date of disability and the effective payment date, by failing to apply the 15-month maximum retroactivity provisions set out in paragraph 42(2)(b) of the *Canada Pension Plan*. Counsel submits that the General Division also erred in its determination of the effective payment date, pursuant to section 69 of the *Canada Pension Plan*.

[3] Counsel submits that based on the date of application of September 2011, the correct deemed date of disability pursuant to paragraph 42(2)(b) of the *Canada Pension Plan* is June 2010 – rather than January 2010 - and pursuant to section 69 of the *Canada Pension Plan*, payments would commence four months later, in October 2010.

ANALYSIS

[4] 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.

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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.

[6] The Appeal Division needs 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.

[7] Counsel for the Applicant submits that, pursuant to paragraph 42(2)(b) of the *Canada Pension Plan*, “in no case shall a person ... be deemed to have become disabled earlier than fifteen months before the time of the making of any application”. In other words, the maximum retroactivity permitted under the *Canada Pension Plan* is 15 months prior to the date of application.

[8] Counsel further submits that while the General Division correctly noted that the application for disability benefits was date stamped received on September 8, 2011, it failed to apply paragraph 42(2)(b) of the *Canada Pension Plan* when it concluded that the deemed date of disability is January 2010. Counsel submits that 15 months prior to the September 2011 date of application is in fact June 2010.

[9] Counsel submits that based on the erroneous deemed date of disability, the General Division further erred in its determination of the effective payment date, pursuant to section

69 of the *Canada Pension Plan*, erroneously identifying the effective date of payment as May 2010.

[10] Counsel points to section 69 of the *Canada Pension Plan*, which stipulates that where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the Applicant became disabled.

[11] Counsel submits that as the Respondent should have been deemed disabled in June 2010, the correct effective date of payment would be four months later, in October 2010.

[12] Counsel submits that the General Division therefore erred, initially by failing to apply paragraph 42(2)(b) of the *Canada Pension Plan* in determining the deemed date of disability, and then compounding that error in calculating the effective payment date.

[13] I am satisfied that the appeal has a reasonable chance of success based on the ground that the General Division may have erred in law by failing to properly calculate the deemed date of disability and the commencement date of a disability pension.

CONCLUSION

[14] The Application is granted.

[15] This decision granting leave in no way presumes the result of the appeal on the merits of the case. However, given the strength of the ground of appeal and the legal nature of the issue involved on appeal, I am inclined to proceed to hearing the matter on the record at the earliest opportunity available, short of any compelling submissions from the Respondent. The parties may make submissions within the time permitted under the DESDA, or may, by consent of the parties, seek to abridge the time to respond.

Janet Lew

Member, Appeal Division