

Citation: *Minister of Employment and Social Development v. T. B.*, 2015 SSTAD 1413

Date: December 10, 2015

File number: AD-15-1248

APPEAL DIVISION

Between:

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

Applicant

and

T. B.

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] In July 2011 the Respondent applied for a *Canada Pension Plan* disability pension. The Applicant denied her claim initially and after reconsideration. The Respondent appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals. The appeal was transferred to the General Division of the Social Security Tribunal pursuant to the *Jobs, Growth and Long-term Prosperity Act*. The General Division held a hearing and decided that the Respondent was disabled. It found that she was disabled in December 2009.

[2] The Applicant requested leave to appeal the General Division decision to the Appeal Division of the Tribunal and that the Appeal Division give the decision that the General Division should have. It did not contest the General Division conclusion that the Respondent was disabled. It argued that the General Division decision contained an error in law as it did not consider paragraph 42(2)(b) of the *Canada Pension Plan* when it determined when the pension payments would begin.

[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. Section 59 sets out the remedies that the Appeal Division can give on an appeal (this is set out in the Appendix to this decision).

[6] I must decide if the Applicant has presented a ground of appeal that may have a reasonable chance of success on appeal and if so, what remedy is appropriate. The Applicant argued that the General Division contained an error in law as it did not consider paragraph 42(2)(b) of the *Canada Pension Plan*. This paragraph states that in no case may a person be deemed to have become disabled earlier than fifteen months before the time of the making of an application. The application in this case was made in July 2011. Therefore, the earliest the Respondent could be deemed to be disabled was fifteen months prior to this, which was April 2010. Clearly the General Division erred in finding that the Respondent was disabled in 2009. Therefore the appeal is allowed.

[7] Section 59 of the *Department of Employment and Social Development Act* provides for the remedies that the Appeal Division may grant on an appeal. This includes giving the decision that the General Division should have given. The *Social Security Tribunal Regulations* also provide that the Tribunal is to conduct matters informally and as quickly as the circumstances and considerations of natural justice permit. In this case the facts are not contested. The Respondent applied for a *Canada Pension Plan* disability pension in July 2011. She was found to be disabled. By operation of law, the earliest she can be deemed to be disabled is April 2010.

CONCLUSION

[8] The Application is therefore granted.

[9] The decision of the General Division is set aside.

[10] The Respondent is found to be disabled as of December 2009. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension. The Respondent's application for the disability pension was received in July 2011. The Respondent is deemed disabled in April 2010 which is fifteen months prior to that date. According to section 69 of the *Canada Pension Plan*, payments start four months after the deemed date of disability. Payments will start as of August 2010.

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.

59. (1) The Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.