



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. S. F.*, 2016 SSTADIS 35

Date: January 19, 2016

File number: AD-16-113

APPEAL DIVISION

Between:

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

Applicant

and

S. F.

Respondent

Decision by: Valerie Hazlett Parker, Member, Appeal Division

REASONS AND DECISION

INTRODUCTION

[1] The Respondent claimed that she was disabled by Graves' disease, mental illness, and back pain when she 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 General Division of the Social Security Tribunal. The General Division held a videoconference hearing and on October 1, 2015 allowed the appeal. It concluded that the Respondent was disabled in October 2010 when she stopped working.

[2] The Applicant filed an application requesting leave to appeal the General Division decision to the Appeal Division of the Tribunal on December 31, 2015. It did not dispute the General Division conclusion regarding the Respondent's medical conditions or their effect on her ability to work. It argued that the General Division decision contained an error in law as it misinterpreted and misapplied the provisions of the *Canada Pension Plan* with respect to proration.

[3] The Respondent did not file any submissions regarding the request for leave to appeal.

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. 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 (this is set out in the Appendix to this decision). Accordingly I must decide if the Applicant has raised a ground of appeal that falls under section 58 of the Act and that may have a reasonable chance of success on appeal.

[6] The General Division decision correctly set out the provisions of the *Canada Pension Plan* regarding the contributory requirements to be eligible to receive a disability pension. In this case, the Respondent had valid contributions for three of the last six years, so did not meet the regular contributory requirement to establish a Minimum Qualifying Period.

[7] Section 19 of the *Canada Pension Plan* provides that when an applicant's earnings and contributions are below the year's basic exemption for that year, their earnings and contributions can be prorated if they became disabled during the prorated period. The decision correctly stated that the Respondent's Minimum Qualifying Period was January 31, 2012 based on proration of her 2012 income. The Applicant contended that the General Division erred as it should have considered if the Respondent became disabled during the proration period, being January 1, 2012 to January 31, 2012. It does not appear that the General Division did so as it concluded that the Respondent was disabled in October 2010. This argument points to an error of law in the decision. This ground of appeal has a reasonable chance of success on appeal.

CONCLUSION

[8] The Application is granted because the Applicant presented a ground of appeal that falls under section 58 of the Act and that may have a reasonable chance of success on appeal.

[9] 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.