Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *S. A. v. Minister of Employment and Social Development*, 2016 SSTADIS 32

Date: January 18, 2016

File number: AD-16-112

APPEAL DIVISION

Between:

S. A.

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 applied for a *Canada Pension Plan* disability pension and claimed that she was disabled by mental illness. The Respondent granted her claim, and determined that she was disabled in November 2012 when she stopped working. The Applicant appealed the decision, claiming that her disability pension should commence in October 2008 as she was incapable of forming or expressing the intention to apply for the pension from that date forward. The General Division of the Social Security Tribunal held a videoconference hearing and on November 20, 2015 dismissed the appeal.

[2] The Applicant requested leave to appeal the General Division decision to the Appeal Division of the Tribunal. She argued that leave to appeal should be granted because the General Division did not observe all of the principles of natural justice, based its decision on erroneous findings of fact and erred in law.

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

ANALYSIS

[4] 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). I must therefore decide if the Applicant has presented 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 Applicant argued, first, that leave to appeal should be granted because the General Division Member "commandeered the proceedings" and delayed and interrupted her presentation of evidence during the hearing, which confused her. In addition, during the hearing she and the General Division Member did not always have documents that corresponded. It is not improper for a Tribunal Member to ask questions of a claimant during a hearing, or to be involved in the process. However, the principles of natural justice are not observed if the Member participates in a hearing in such a way that the claimant is not able to fully present her case or answer the case against her. This argument perhaps points to such an error, and may have a reasonable chance of success on appeal. At the hearing of the appeal, the Tribunal expects that the Claimant will provide a transcription of the relevant portions of the General Division hearing, or identify the time marker on the hearing recording.

[7] The Applicant also argued that the General Division disregarded or misinterpreted the evidence when it concluded that she suffered from three periods of incapacity between 2008 and 2012 when the medical evidence presented was meant to demonstrate a continuous period of incapacity. With this argument, the Applicant has asked the Appeal Division to reweigh the evidence to reach a different conclusion. It is for the General Division of the Tribunal to receive evidence from the parties and weigh it to reach its decision. It is not for the Appeal Division to reweigh the evidence to perhaps come to a different conclusion (see *Simpson v. Canada (Attorney General)*, 2012 FC 890). This is not a ground of appeal that may have a reasonable chance of success on appeal.

[8] The Applicant also wrote in the application for leave to appeal that she would provide further evidence to support her claim. The promise of further evidence or its production are not grounds of appeal under section 58 of the Act.

[9] In addition, the Applicant stated that she had requested that the Employer Questionnaire be removed from the record and gave reasons for this at the hearing. The General Division based its decision, in part, on the material set out in this questionnaire. Again, it is for the General Division to receive and consider all of the evidence, including the Applicant's arguments about why the questionnaire should not be considered. The General Division is presumed to have considered this argument. Not every piece of evidence and every

argument advanced need be mentioned in the decision (see *Simpson*). This argument does not rebut the presumption that the General Division heard and considered these arguments. I am not persuaded that this ground of appeal may have a reasonable chance of success on appeal.

[10] Finally, the Applicant complained that the General Division did not correct the Respondent's error regarding when her disability pension payments should begin. Initially the Respondent stated that she was disabled as of December 2012 when the Applicant applied for the disability pension. It subsequently agreed that she was disabled as of November 2012. The *Canada Pension Plan* is clear that disability pension payments are to start four months after a claimant is found to be disabled. Despite finding that the Applicant was disabled in November 2012, the General Division decision stated that payments would begin in April 2013, five months later. This is an error, and is a ground of appeal that has a reasonable chance of success on appeal.

CONCLUSION

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

[12] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case. The parties may make submissions regarding the form the hearing of the appeal should take (e.g. teleconference, videoconference, in writing or in person) along with their submissions on the merits of the appeal.

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.