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

Citation: *M. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 56

Tribunal File Number: AD-15-983

BETWEEN:

M. C.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Janet LEW

DATE OF DECISION: January 25, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated June 3, 2015. The General Division proceeded on the record and determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that his disability was not "severe" at his minimum qualifying period of December 31, 2010. The Applicant's family physician filed an application requesting leave to appeal on September 4, 2015. The Applicant filed additional submissions with the Social Security Tribunal on October 9, 2015. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

ISSUE

[2] Does the appeal have a reasonable chance of success?

SUBMISSIONS

[3] In the initial leave application, in the form of a letter dated September 4, 2015, the family physician indicated that he had completed a form on behalf of the Applicant, and that the Applicant then mistakenly sent the form to Service Canada, rather than to the Social Security Tribunal. The family physician urged the Social Security Tribunal to accept this form. The family physician did not identify the form or the document, and did not enclose a copy of it.

[4] On October 9, 2015, the Applicant requested that his appeal be reviewed, "for there is [sic] a lot of things that demonstrate how serious [his] condition is and has been since [he] fell [in the summer of 2009] …". He also confirmed that he mistakenly sent a document to Service Canada, rather than to the Social Security Tribunal. The Applicant included the following with his submissions:

(a) medical report prepared by his family physician, dated August 4, 2015 (AD1A-6 to AD1A-9); and

(b) duplicate of the initial leave application completed by the Applicant's family physician (AD1A-10).

[5] On November 2, 2015, the Social Security Tribunal wrote to the Applicant. The letter reads in part:

> You filed an incomplete Application Requesting Leave to Appeal to the Appeal Division on September 4, 2015. You filed additional submissions on October 9, 2015. However, you did not set out any grounds of appeal.
>
> Are you alleging any errors on the part of the General Division under subsection 58(1) of the [*Department of Employment and Social Development Act*]? If so, you must identify the error(s) and explain how the General Division erred. For instance, if you should allege that the General Division erred in law in making its decision, whether or not the error appears on the face of the record, you would have to explain how the General Division erred in law in making its decision.
>
> Or, if you should allege that 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", you would have to identify what erroneous finding(s) of fact the General Division may have based its decision in a perverse or capricious manner or without regard for the material before it.

[6] The Social Security Tribunal requested any additional information that addressed the grounds set out in subsection 58(1) of the Department of Employment and Social Development Act (DESDA).

[7] On December 14, 2015, the Social Security Tribunal contacted the Applicant by telephone to enquire as to whether he would be filing any additional submissions. Phone log notes indicate that the Applicant had received the letter dated November 2, 2015 from the Social Security Tribunal but that he did not intend to respond or file any additional submissions. No additional submissions have been received from the Applicant.

[8] The Respondent has not filed any written submissions in respect of this leave application.

ANALYSIS

[9] Subsection 58(1) of the 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.

[10] I need 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. The Federal Court of Canada recently approved this approach in Tracey v. Canada (Attorney General), 2015 FC 1300.

[11] Although I invited submissions addressing the grounds of appeal under subsection 58(1) of the DESDA, the Applicant declined to provide further submissions.

[12] Neither the Applicant nor his family physician has specified how the reasons fall into any of the grounds of appeal. The Applicant has not identified any errors of law which the General Division might have made, nor does he allege that the General Division based its decision on an erroneous finding of fact. There are no submissions either that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[13] While an applicant is not required to prove the grounds of appeal for the purposes of a leave application, at the very least, an applicant ought to set out some particulars of the error or failing committed by the General Division which fall into the enumerated grounds of appeal under subsection 58(1) of the DESDA, otherwise the submissions are deficient.

[14] The Applicant's submissions call for a reassessment and re-weighing of the evidence, which is beyond the scope of a leave application. The role of the Appeal Division is to determine if the General Division committed a reviewable error under subsection 58(1) of the DESDA, and if so, to provide a remedy for that error. The Appeal Division has no jurisdiction to intervene otherwise or to hear the appeal on a *de novo* basis.

MEDICAL REPORT OF AUGUST 4, 2015

[15] The Applicant's submissions include a medical report of his family physician, dated August 4, 2015. Both the Applicant and the family physician suggest that this report should have been before the General Division, but for the fact that the Applicant had mistakenly sent it to Service Canada, rather than to the Social Security Tribunal. However, the hearing (on the record) before the General Division took place on June 3, 2015, before the medical report had been prepared. It cannot be said that either the Social Security Tribunal or the General Division somehow erred or breached any principles of natural justice by not ensuring that the report was before it, when the report had yet to be prepared.

[16] If the Applicant is suggesting that I should now consider this report as part of the leave application, there are limitations under subsection 58(1) of the DESDA. The section makes it clear that the grounds of appeal are limited. Thus, in a leave application, any new facts should relate to the grounds of appeal. Neither the leave application nor the appeal provides any opportunities to re-assess or re-hear the claim to determine whether the Applicant is disabled as defined by the *Canada Pension Plan*.

[17] In *Tracey*, the Federal Court determined that there is no obligation to consider any new evidence. Indeed, Roussel J. wrote:

> Under the current legislative framework however, the introduction of new evidence is no longer an independent ground of appeal (*Belo-Alves* [*v. Canada (Attorney General),* 2014 FC 1100], at para 108).

[18] If the Applicant has provided the medical report of August 4, 2015 of his family physician in an effort to rescind or amend the decision of the General Division, he must comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations*, and must also file an application for rescission or amendment with the same Division that made the decision. There are strict deadlines and requirements under section 66 of the DESDA for rescinding or amending decisions. Subsection 66(2) of the DESDA requires an application to rescind or amend a decision to have been made within one year after the day on which a decision is communicated to a party, while paragraph 66(1)(b) of the DESDA requires an applicant to demonstrate that the new facts are material and could not have been discovered at

the time of the hearing with the exercise of reasonable diligence. Under subsection 66(4) of the DESDA, the Appeal Division in this case has no jurisdiction to rescind or amend a decision based on new facts, as it is only the Division which made the decision which is empowered to do so, which in this case is the General Division.

[19] In summary, the medical report of August 4, 2015 does not raise nor relate to any grounds of appeal and I am therefore unable to consider it for the purposes of a leave application.

CONCLUSION

[20] As the Applicant's reasons for appeal effectively disclose no grounds of appeal for me to consider, I am not satisfied that the appeal has a reasonable chance of success and the application for leave is therefore dismissed.

Janet Lew
Member, Appeal Division