



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *P. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 64

Tribunal File Number: AD-16-180

BETWEEN:

P. C.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet LEW

DATE OF DECISION: January 29, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated October 28, 2015. The General Division conducted a videoconference hearing on October 26, 2015 and determined that the Respondent had a severe and prolonged disability in July 2012 and that according to section 69 of the *Canada Pension Plan*, payment of a Canada Pension Plan disability pension ought to commence as of November 2012. Counsel for the Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on January 20, 2016, 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.

ISSUE

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

SUBMISSIONS

[3] The General Division granted the Respondent a disability pension. The Applicant does not contest the finding that the Respondent was disabled, however, submits that the General Division erred in law by failing to find the Respondent disabled within her minimum qualifying period of December 31, 2011. Counsel submits that subparagraph 44(1)(b)(i) of the *Canada Pension Plan* stipulates that the Respondent had to have been found disabled on or before her minimum qualifying period of December 31, 2011, and that by awarding a pension after the expiration of this date resulted in an error of law.

ANALYSIS

[4] Subsection 58(1) of the *Department of Employment and Social Development* (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.

[5] 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.

[6] The General Division calculated that the minimum qualifying period for the Respondent is December 31, 2011. The General Division indicated that the parties agreed with this finding.

[7] In its conclusion, at paragraph 50, the General Division found that the Respondent had a severe and prolonged disability in July 2012. It relied upon one of the opinions of the Respondent's treating physicians who confirmed that the Respondent could no longer work.

[8] At paragraph 8, the General Division set out the issue before it. The General Division determined that it had to decide whether the Respondent had a severe and prolonged disability on or before the date of the minimum qualifying period. However, it found that she had a severe and prolonged disability in July 2012 and proceeded to award a disability pension on this basis.

[9] 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 awarding a disability pension after the expiration of the Respondent's minimum qualifying period.

CONCLUSION

[10] The Application is granted.

[11] 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