



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. T. F.*, 2016 SSTADIS 73

Tribunal File Number: AD-16-136

BETWEEN:

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

Appellant

and

T. F.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: February 8, 2016

REASONS AND DECISION

OVERVIEW

[1] The Applicant seeks leave to appeal the decision of the General Division dated October 15, 2015. The General Division conducted an in-person hearing on October 8, 2015 and found the Respondent to have a severe and prolonged disability, with a deemed date of disability of April 2010. The General Division determined that payment of a disability pension should commence effective August 2010. Counsel for the Applicant filed an Application Requesting Leave to Appeal to the Appeal Division on January 13, 2016, on the basis that the General Division made an error of law. Counsel for the Respondent responded on February 3, 2016, advising that, “[they] have no objections to the granting of the Application for Leave to Appeal ... regarding the issue of the commencement of the pay period”. Nonetheless, to succeed on this application, the Applicant must satisfy me that the appeal has a reasonable chance of success.

SUBMISSIONS

[2] Counsel for the Applicant submits that the General Division erred in law by failing to apply subsection 55.2(9) of the *Canada Pension Plan* when determining the effective date of payment of a disability pension to the Respondent. Counsel submits that subsection 55.2(9) of the *Canada Pension Plan* takes precedence over section 69 of the *Plan*, and that, as such, payments of a disability pension could only commence in August 2011, the month following the month in which the credit split took place.

ANALYSIS

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

[4] 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 approved this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The General Division relied on section 69 of the *Canada Pension Plan*, which reads as follows:

Commencement of pension

69. Subject to section 62, where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled, except that where the applicant was, at any time during the five year period next before the month in which the applicant became disabled as a result of which the payment is approved, in receipt of a disability pension payable under this Act or under a provincial pension plan,

(a) the pension is payable for each month commencing with the month next following the month in which the applicant became disabled as a result of which the payment is approved; and

(b) the reference to “fifteen months” in paragraph 42(2)(b) shall be read as a reference to “twelve months”.

[6] The Applicant does not contest the finding that the Respondent was disabled in the month when she stopped working. (The leave application refers to April 2006 as the date when the Applicant stopped working, but the General Division indicated at paragraph 33 that the Applicant had stopped working in December 2006.) However, counsel for the Applicant submits that the General Division erred in determining the effective date of payment of a disability pension under the Canada Pension Plan.

[7] Counsel submits that as the Respondent had to rely upon a division of unadjusted pensionable earnings to have a minimum qualifying period of December 31, 2008, subsection 55.2(9) of the *Canada Pension Plan* applies and takes precedence over section 69, in

determining the effective date of payment of a disability pension. Subsection 55.2(9) of the *Canada Pension Plan* reads as follows:

Payment of benefit

(9) Where there is a division under section 55.1 and a benefit is or becomes payable under this Act to or in respect of either of the persons subject to the division for a month not later than the month following the month in which the division takes place, the basic amount of the benefit shall be calculated and adjusted in accordance with section 46 and adjusted in accordance with subsection 45(2) but subject to the division, and the adjusted benefit shall be paid effective the month following the month in which the division takes place but in no case shall a benefit that was not payable in the absence of the division be paid in respect of the month in which the division takes place or any prior month.

[8] If subsection 55.2(9) of the Canada Pension Plan applies, this would change the effective date when the disability pension commences.

[9] I am satisfied that there is a reasonable chance of success on the ground that subsection 55.2(9) of the Canada Pension Plan takes precedence over section 69 of the Canada Pension Plan, when a division of unadjusted pensionable earnings has taken place, in determining the commencement of payments of a disability pension.

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.

Janet Lew
Member, Appeal Division