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

Citation: *P. B. v. Minister of Employment and Social Development,* 2016 SSTADIS 75

Tribunal File Number: AD-15-1609

BETWEEN:

**P. B.**

Appellant

and

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

Respondent

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# SOCIAL SECURITY TRIBUNAL DECISION

## Appeal Division – Rescind or Amend Decision

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DECISION BY: Janet Lew

DATE OF DECISION: February 12, 2016

## REASONS AND DECISION

## OVERVIEW

[1] The Applicant seeks leave to appeal the decision of the General Division rendered on November 2, 2015. The General Division 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" on or before his minimum qualifying period of December 31, 2008. The Applicant sought leave on December 18, 2015. He filed additional submissions on January 25, 2016, to clarify the grounds of appeal, in response to a request from the Social Security Tribunal. To succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

## SUBMISSIONS

[2] In the initial leave application filed on December 18, 2015, the Applicant submitted that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, in that it neglected to consider his many years of contributions to the Canada Pension Plan or years of volunteer service. He submitted that this amounted to being treated unfairly.

[3] The Social Security Tribunal wrote to the Applicant on January 5, 2016, seeking additional information as to how the General Division failed to observe a principle of natural justice. The letter indicated that a breach of natural justice could occur when a party had been denied a fair hearing or an opportunity to fairly present his or her case. The Social Security Tribunal invited the Applicant to indicate how he might have been denied a fair hearing or been denied an opportunity to present his case, but he did not specifically address this issue. The Applicant responded to this letter on January 25, 2016, repeating his previous assertions that he had made valuable contributions to the Canada Pension Plan. He also included three medical documents: (1) medical chart of his family physician, (2) neuropsychological consultation summary dated July 10, 11 and 16, 2013 and (3) the first page of a neuropsychological consultation dated August 18, 2013. The Applicant requested some financial assistance which would allow him to subsist.

[4] The Respondent did not file any written submissions in respect of this leave application.

## ANALYSIS

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (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;
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> (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
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> (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.

[6] 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.

### (a) Natural justice

[7] Natural justice is concerned with ensuring that an appellant has a fair and reasonable opportunity to present his or her case, that he or she has a fair hearing, and that the decision rendered is free of any bias or the reasonable apprehension or appearance of bias. The Applicant did not indicate how the General Division might have failed to observe the principles of natural justice in this regard.

[8] The Applicant submits that the result is unfair, given his history of contributions to the Canada Pension Plan, but this does not relate to any of the enumerated grounds of appeal under subsection 58(1) of the DESDA. There is no jurisdiction to intervene on the basis that the outcome is unfair to the Applicant, if the decision is otherwise unreviewable.

[9] The Federal Court of Appeal in *Miceli-Riggins v. Canada (Attorney General)*, 2013 FCA 158, examined the objectives of the *Canada Pension Plan.* The Court stated:

> [69] . . . The *Plan* is not supposed to meet everyone's needs. Instead, it is a contributory plan that provides partial earnings-replacement in certain technically- defined circumstances. It is designed to be supplemented by private pension plans, private savings, or both. See *Granovsky v. Canada (Minister of Employment and Immigration*), 2000 SCC 28 at paragraph 9, [2000] 1 S.C.R. 703.
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> [70] Indeed, it cannot even be said that the *Plan* is intended to bestow benefits upon demographic groups of one sort or another. Instead, it is best regarded as a contributory-based compulsory insurance and pension scheme designed to provide some assistance – far from complete assistance – to those who satisfy the technical qualification criteria.
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> [71] Like an insurance scheme, **benefits are payable on the basis of highly technical qualification criteria**…
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> . . .
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> [74] In the words of the Supreme Court,
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> The *Plan* was designed to provide social insurance for Canadians who experience a loss of earnings due to retirement, disability, or the death of a wage-earning spouse or parent. It is not a social welfare scheme. It is a contributory plan in which **Parliament has defined both the benefits and the terms of entitlement**, including the level and duration of an applicant's financial contribution.
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> (*Granovsky*, *supra* at paragraph 9.)
>
> (my emphasis)

[10] Disability benefits are not available to everyone who suffers from a disability. It is clear that an applicant must meet certain requirements in order to qualify for a disability pension under the *Canada Pension Plan*. The fact that the Applicant made valid contributions to the Canada Pension Plan is alone of no consequence, nor is the impact of the decision of the General Division on the Applicant, as there are highly technical requirements he had to meet to qualify for a disability pension. The General Division found that the Applicant had not met those requirements. The *Canada Pension Plan* does not permit a General Division (or the Appeal Division for that matter) to consider the impact its decisions may have on any of the

parties, nor does it confer any discretion upon the General Division to consider other factors outside of the *Canada Pension Plan* in deciding whether an applicant is disabled as defined by that Act. Hence, it cannot be said that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.

[11] I am not satisfied that the appeal has a reasonable chance of success on this ground.

### (b) Medical records

[12] The Applicant filed three medical records with his leave submissions. The medical chart is at page GD3-50, the neuropsychological consultation summary dated July 10, 11 and 16, 2013 is at page GD3-64 and the neuropsychological consultation of August 18, 2013 is at page GD3-58 of the hearing file that was before the General Division.

[13] The Applicant submits that this evidence confirms the severity of his disability, and it seems that he is requesting that we reconsider this evidence. Neither the leave nor the appeal allows for a reassessment or redetermination of the evidence that was before the General Division, unless there is a reviewable error in connection with that evidence. The Applicant does not allege that to be the case. The General Division has already tried this evidence.

[14] As the Federal Court held in *Tracey*, it is not the role of the Appeal Division to reassess the evidence or reweigh the factors considered by the General Division when determining whether leave should be granted or denied. Neither the leave nor the appeal provides opportunities to re- litigate or re-prosecute the claim. I am not satisfied that the appeal has a reasonable chance of success on the ground that I should reconsider the evidence.

## CONCLUSION

[15] The application for leave to appeal is dismissed.

*Janet Lew*
Member, Appeal Division