



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. P. v. Minister of Employment and Social Development*, 2016 SSTADIS 111

Date: March 10, 2016

File number: AD-16-102

APPEAL DIVISION

Between:

D. P.

Applicant

and

Minister of Employment and Social Development

Respondent

Leave to Appeal

Decision by: Hazelyn Ross, Member, Appeal Division

DECISION

[1] Leave to appeal to the Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), is refused.

INTRODUCTION

[2] The Applicant applied for a *Canada Pension Plan* (CPP) disability pension. The Respondent accepted his application under the late application provisions of the CPP as the Applicant had not made sufficient contribution to the CPP in at least four of the six years prior to the application or for at least 25 years including three years of the last six years prior to the time he made the application. Notwithstanding that the Respondent applied the late application provisions to his application, the application was denied. The Applicant asked the Respondent to reconsider its decision, which it did. However, the decision remained unchanged. (Respondent's letter of July 23, 2012,GD1)

[3] The Applicant appealed the reconsideration decision. On September 25, 2015 the General Division of the Tribunal heard the appeal, issuing its decision the same day.

[4] In its decision, the General Division found that the Applicant did not qualify for a CPP disability pension because he was not diagnosed with liver disease until 2011, which is more than five years after the end of his minimum qualifying period (MQP). The applicant's MQP ended on December 31, 2005. The Applicant is seeking leave to appeal this decision.

GROUNDS OF THE APPLICATION

[5] The Applicant stated that he is appealing the decision because he disagreed with it. In his view, he qualified for the CPP disability pension because of his liver disease and its effect on his health. He stated that his medical practitioners had concluded that he was disabled. Furthermore, other provincial schemes had found him to be disabled and eligible for benefits under those schemes.

ISSUE

[6] The Appeal Division must decide if the appeal has a reasonable chance of success.

APPLICABLE LAW

[7] Leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division.¹ To grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success². In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 as well as in *Fancy v. Canada (Attorney General)*, 2010 FCA 63, the Federal Court of Appeal equated a reasonable chance of success to an arguable case. In *Canada (Attorney General) v. Carroll*³ the Federal Court opined that, “an Applicant will raise an arguable case if she [or he] ... raises an issue not considered ... or can point to an error” in the decision.

[8] There are only three grounds on which an appellant may bring an appeal. These grounds are set out in section 58 of the *Department of Employment and Social Development Act*, (DESD Act), namely, breaches of natural justice; error of law; or error of fact.⁴ However, to grant leave, the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. This means that the Appeal Division must first find that, were the matter to proceed to a hearing, at least one of the grounds of the Application relates to a ground of appeal and that there is a reasonable chance that the appeal would succeed on this ground.

[9] The Appeal Division requested submissions on whether or not leave should be granted. The Respondent declined to make submissions, while the Applicant made reference to a letter he sent to the Office of the Commissioner of Review Tribunals on July 27, 2012. He also stated that he was upset by the constant refusals, especially when his health is worsening and he has not worked since 2010.

¹ Sections 56 to 59 of the DESD Act. Subsections 56(1) and 58(3) govern the grant of leave to appeal, providing that “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

² The DESD Act, subsection 58(2) sets out the criteria on which leave to appeal is granted, namely, “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

³ *Canada (Attorney General) v. Carroll*, 2011FC1092 para 14.

⁴ **58(1) Grounds of Appeal** –

- a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or 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.

ANALYSIS

[10] The Applicant submitted that the General Division decision is wrong. He argued that he suffers from a disability that is severe and prolonged and because of which he should be found eligible for a CPP disability pension. He relies on the fact that his liver disease has worsened.

[11] The Appeal Division does not doubt that the Applicant now suffers from severe liver disease. However, he has not shown how the General Division either breached natural justice or refused to exercise or exceeded its jurisdiction. Nor has the Applicant shown how the General Division either erred in law or based its decision on an error of fact that it made perversely or capriciously or without regard for the material before it, which are the only bases on which an appeal can succeed.

[12] Disagreeing with the General Division decision is not a ground of appeal. It is also not a ground of appeal that a provincial or other scheme has found the Applicant to be disabled. Neither is it a ground of appeal that the Applicant has contributed to the CPP.

[13] The Applicant had to show two things. First, he had to show that his medical conditions prevented him from working. He then had to establish that this occurred on or before December 31, 2005. The General Division found that he had not met his onus.

[14] The General Division found that while he began to have some symptoms of liver disease in 2005 and was advised to stop drinking in 2006, liver disease did not prevent the Applicant from working on or before December 31, 2005. A workplace injury and the surgery and therapy required interrupted his work. However, he returned to the workforce in 2009 and worked until October 2010. As a result, the General Division found that the while the Applicant was able to show that as of July 2011, liver disease prevented him from working he was not able to show that it prevented him from working prior to December 31, 2005, which is the important period.

[15] The Appeal Division finds no error on the part of the Appeal Division either in its identification of the applicable law or the way it applied the law to the facts of the

Applicant's case. The Appeal Division also finds that the General Division did not misunderstand or disregard the facts of the Applicant's case. Thus leave to appeal cannot be granted.

CONCLUSION

[16] For all of the above reasons the Application is refused.

Hazelyn Ross
Member, Appeal Division