



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 122

Tribunal File Number: AD-16-152

BETWEEN:

J. 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: March 29, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated October 22, 2015. The General Division determined on the record that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not “severe” at her minimum qualifying period of December 31, 2009. The Applicant’s counsel filed an application requesting leave to appeal on January 11, 2016. The Applicant’s counsel raised a number of grounds of appeal. 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 Applicant’s counsel submits that the General Division did not properly assess the medical evidence as it appeared to place “a lot of emphasis” on reports and information that originated from the Workplace Safety Insurance Board (WSIB). Counsel submits that the WSIB reports should be assigned less weight as WSIB’s focus is on only work-related conditions to determine if the worker is capable of working. Counsel further submits that WSIB directs physicians who assess workers to find them employable, regardless of a worker’s complete medical history.

[4] The Applicant’s counsel submits that the Applicant should be provided with the opportunity to explain why and what treatment she underwent and why they were unsuccessful, and WSIB’s focus when it assessed her. Counsel submits that if the Applicant is provided with the opportunity, she will be able to demonstrate how her numerous medical conditions are both severe and prolonged. Counsel submits that the Applicant suffers from bilateral rotator cuff tendinitis, myofascial pain syndrome, cervical zygapophyseal pain, peripheral neuropathic pain, pain disorder, major depression and anxiety disorder. Given the

Applicant's extensive medical issues, counsel submits that the Applicant is incapable of obtaining gainful employment.

[5] The Social Security Tribunal provided a copy of the leave materials to the Respondent, but the Respondent did not file any submissions.

ANALYSIS

[6] 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;
- (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.

[7] 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.

(a) Weight of evidence

[8] The Applicant's counsel submits that the General Division assignment of weight on the evidence was misplaced. These submissions should have been made before the General Division and should also have been substantiated to some degree. That said, the issue of weight does not fall within any of the enumerated grounds of appeal under subsection 58(1) of the DESDA. I note in any event that the Federal Court of Appeal has refused to interfere with a decision-maker's assignment of weight to the evidence, holding that that properly is a matter for "the province of the trier of fact": *Simpson v. Canada (Attorney General)*, 2012

FCA 82. I would defer to the General Division in this regard as well. As the trier of fact, the General Division is in the best position to assess the evidence before it and to determine the appropriate amount of weight to assign. The Appeal Division does not hear appeals on a *de novo* basis and is in no position to assess the matter of weight. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(b) Reassessment

[9] The Applicant's counsel has listed the Applicant's numerous medical conditions. The representative submits that the General Division erred, as the evidence shows that the Applicant's disabilities were severe and prolonged at her minimum qualifying period.

[10] 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 conduct a reassessment of the evidence.

CONCLUSION

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

Janet Lew
Member, Appeal Division