



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. D. E.*, 2016 SSTADIS 131

Date: April 5, 2016

File number: AD-16-374

Appeal Division

Between:

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

Applicant

and

D. E.

Respondent

Decision by: Hazelyn Ross, Member, Appeal Division

Canada

DECISION

[1] The Appeal Division of the Social Security Tribunal, (the Tribunal), grants leave to appeal.

[2] The appeal is allowed.

BACKGROUND

On December 2, 2015 a Member of the General Division of the Tribunal issued a decision in the appeal of the Respondent from a reconsideration decision that found him ineligible for a *Canada Pension Plan*, (CPP), disability pension. The Member granted the appeal. She found that the Appellant became disabled as of August 2013, however, given that his application was received in April 2012, pursuant to paragraph 42(2)b) of the CPP, the deemed date of disability was January 2011. The Member went on to state that, pursuant to section 69 of the CPP, the payment of the disability pension would commence as of May 2012.

GROUND OF THE APPLICATION

[3] The Applicant appeals the decision. Counsel for the Applicant submits that General Division the erred in fact and in law when it applied section 69 of the CPP, in that it arrived at a payment date that was one year later than that which ought to apply given the deemed date of disability. In the submission of Counsel for the Respondent the correct date is May 2011 and not May 2012 as stated in the decision.

THE LAW

What must the Applicant establish on an Application for Leave to Appeal?

[4] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”. On an Application for Leave to Appeal the hurdle that an applicant must meet is a first and lower one than that which must be met on the hearing of the appeal on the merits. To grant leave the Appeal Division must be satisfied that the appeal would have a

reasonable chance of success. A reasonable chance of success has been equated with an arguable case¹; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[5] Subsection 58(1) of the DESD Act states that the following are the only 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;
- (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.

ISSUE

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

ANALYSIS

[7] Counsel for the Applicant submitted that the General Division erred in its application of CPP section 69. He submitted that on the basis of the error in the date, the appeal would have a reasonable chance of success and the Appeal Division should grant leave to appeal.

[8] Section 69 of the CPP provides that “where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month in which the applicant became disabled...” Having read the decision of the General Division, the Appeal Division is persuaded that the General Division erred as submitted by the Applicant. Accordingly, the Appeal Division is satisfied that the appeal would have a reasonable chance of success.

¹ *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

CONCLUSION

[9] Leave to appeal is granted.

THE APPEAL

[10] Counsel for Applicant asked the Appeal Division both to grant leave to appeal and to allow the appeal. Counsel also asked the Appeal Division to exercise its power under s. 59 of the DESD Act to give the decision that the General Division should have given, namely that the Respondent became disabled as of January 2011 with, pursuant to section 69 of the *CPP*, payment commencing as of May 2011.

[11] Given the circumstances of the case, the Tribunal's finding that the Applicant has raised an arguable case; and its mandate to conduct proceedings as informally and quickly as possible as the circumstances and the considerations of fairness and natural justice permit, the Tribunal is of the view that this is an appropriate case in which to exercise the jurisdiction granted in s. 59 of the DESD Act.

CONCLUSION

[12] The Appeal is allowed.

DECISION

[13] The Tribunal exercises its jurisdiction under s. 59 of the DESD Act to give the decision the General Division should have given. Accordingly, it is the decision of the Tribunal that,

The application was received in April 2012 and pursuant to CPP ss. 42(2)(b) the Respondent is deemed disabled as of January 2011. Therefore, pursuant to CPP s. 69 payment of the disability pension commences effective May 2011, which is four months after the date the Respondent is deemed to have become disabled.

Hazelyn Ross
Member, Appeal Division