



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. L. v. Minister of Employment and Social Development*, 2016 SSTADIS 127

Tribunal File Number: AD-16-348

BETWEEN:

M. L.

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: April 4, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated December 6, 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 his disability was not “severe” by the end of his minimum qualifying period of December 31, 2012. The Applicant’s counsel filed an application requesting leave to appeal on February 29, 2016. In order for this application to succeed, 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 failed to observe a principle of natural justice, erred in law and based its decision on an erroneous finding of fact that it made in a capricious manner, by miscalculating the minimum qualifying period. Counsel contends that the applicable minimum qualifying period ends on December 31, 2013.

[4] Counsel argues that the General Division failed to give the appropriate weight to the Applicant’s skills, education and training; that it failed to consider all of the essential issues, and that it based its decision on irrelevant facts and inaccurate assumptions.

[5] Counsel maintains that the Applicant meets the definition of disabled under subsection 42(2) of the *Canada Pension Plan*. He submits that the Applicant’s condition including left index finger amputation with ongoing pain and nerve damage – is both severe and prolonged. Counsel anticipates obtaining and filing additional medical records to support the Applicant’s claim.

[6] The Social Security Tribunal provided a copy of the leave materials to the Respondent. However no written submissions were received from the Respondent.

ANALYSIS

[7] 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.

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

(a) Minimum qualifying period

[9] Counsel submits that the General Division erred in its calculation of the minimum qualifying period. He submits that the minimum qualifying period should end on December 31, 2013, rather than December 31, 2012. The decision indicates that the parties agreed to the December 31, 2012 date, although counsel disputes this and claims that neither he nor his client have any knowledge as to how this agreement was reportedly reached, or upon what it was allegedly based.

[10] It is unclear how the General Division or the parties calculated the minimum qualifying period. Nonetheless, if it was miscalculated, this would constitute an error of

law and it would have significant implications for the Applicant, as he claims that he became disabled on May 18, 2013, following an accident involving a firecracker.

[11] Counsel submits that the Applicant had contributions to the Canada Pension Plan for the years 2007, 2008, 2009, 2010 and 2011, as follows:

Year	Unadjusted Pensionable Earnings (UPE)	Contributions to CPP	Disability Basic Exemption	Valid Contribution
2007	\$26,568	\$1,141.89	\$4,300	Yes
2008	\$12,237	\$432.51	\$4,400	Yes
2009	0	\$1,727.65	\$4,600	No
2010	\$39,224	\$1,699.21	\$4,700	Yes
2011	\$37,827		\$4,800	Yes
2012			\$5,000	

[12] Counsel submits that as the Applicant had contributions to the Canada Pension Plan in four of the previous six calendar years prior to May 18, 2013, the relevant minimum qualifying period therefore ends on December 31, 2013.

[13] However, it is not sufficient for the purposes of calculating the minimum qualifying period to find that there were contributions within a calendar year. Paragraph 44(1)(b) of the *Canada Pension Plan* requires an applicant to have made valid contributions to the Canada Pension Plan for not less than the minimum qualifying period, and as counsel points out, subsection 44(2) of the *Canada Pension Plan* stipulates that a contributor shall be considered to have made contributions for not less than the minimum qualifying period only if the contributor has made contributions during the contributor's contributory period on earnings that are not less than the contributor's basic exemption (for disability). In other words, the contributions must meet a certain threshold to be valid. Any contributions which fall below the year's basic exemption (for disability) do not qualify as valid contributions.

[14] Notwithstanding the fact that the Applicant had contributions to the Canada Pension Plan for the year 2009, he had no pensionable earnings. His 2009 earnings fell

below \$4,600, the year's basic exemption for disability. Any contributions for 2009 therefore were not considered sufficient to extend the minimum qualifying period .

[15] I am not satisfied that the appeal has a reasonable chance of success on the ground that the General Division miscalculated the Applicant's minimum qualifying period.

(b) Other grounds

[16] Counsel has raised a number of other grounds of appeal, but they are all predicated on the assumption that the end of the Applicant's minimum qualifying period is December 31, 2013, rather than December 31, 2012.

[17] Counsel submits that the Applicant claims and has always claimed to be disabled as of May 18, 2013, following an accident (at pages 3 and 11 of counsel's submissions). In other words, the Applicant does not dispute that he was not disabled for the purposes of the *Canada Pension Plan* on or before December 31, 2012. This being so, I need not consider these other grounds. It is moot whether the General Division may have erred on these other grounds, if the Applicant became disabled after his minimum qualifying period.

(c) Additional medical records

[18] Counsel proposes to provide "voluminous relevant medical documentation", which he describes as "a crucial set of records which would provide further proof of the [Applicant's] inability to work". Counsel submits that it is essential that this documentation be considered by both the decision-maker and the Appeal Division, to determine entitlement.

[19] Setting aside the issue of the applicable minimum qualifying period, if counsel is requesting that I consider any additional facts, re-weigh the evidence and re-assess the claim in the Applicant's favour, the narrow grounds of appeal under subsection 58(1) of the DESDA restrict me from doing so. In *Belo-Alves v. Canada (Attorney General)*, 2014 FC 1100, at para. 108, and cited by *Tracey*, the Federal Court held that "the introduction of new evidence is no longer an independent ground of appeal".

[20] Essentially the Applicant is seeking a reassessment. 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. I am not satisfied that there is a reasonable chance that the Appellant will succeed in demonstrating that a reassessment is appropriate.

CONCLUSION

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

Janet Lew

Member, Appeal Division