



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 130

Tribunal File Number: AD-16-334

BETWEEN:

M. S.

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 November 24, 2015. Following an in-person hearing, 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” by his minimum qualifying period of December 31, 2012. The Applicant’s counsel filed an application requesting leave to appeal on February 22, 2016. 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 erred in law as it viewed each of the Applicant’s injuries and impairments separately, without considering their cumulative impact.

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

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;

- (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.

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

[7] The Applicant alleges that the General Division failed to address the cumulative impact of his numerous injuries and impairments.

[8] In its analysis, the General Division conveniently used headings to indicate different subject matter. The Division used the headings “pain”, “seizure”, “headaches”, and “mental health” in reviewing the Applicant’s various injuries.

[9] For a number of reasons, the General Division was not persuaded that the Applicant had any issues involving seizures. From this perspective, a cumulative assessment involving the Applicant’s purported seizures was not required, as there would have been no difference if the General Division assessed the Applicant’s remaining conditions alongside the Applicant’s purported seizure(s).

[10] Similarly, the Applicant also had what the General Division described as “self-reported sleep disorder” but the General Division could find no persuasive evidence that a sleep disorder existed, given the lack of medical evidence.

[11] Additionally, the General Division was not persuaded that the Applicant had any ongoing issues involving migraine headaches. Indeed, it wrote, “there is significant evidence to the contrary regarding disability on the grounds of headaches”. A cumulative assessment involving the Applicant’s migraine headaches would not have been merited in this case.

[12] That said, the General Division acknowledged the Applicant's complaints that he continued to experience "some pain" on the left side of his head. In this regard, the General Division assessed the Applicant's complaints of "headaches" together with the Applicant's complaints of pain to his neck, back and hips. So, it cannot be said that the General Division did not cumulatively assess at least some of the Applicant's injuries or impairments.

[13] This left the Applicant's mental health for consideration. The General Division appears to have drawn a clear demarcation between some of the Applicant's various complaints. The General Division does not appear to have considered the Applicant's general complaints of pain together with his depressive symptoms, nor determined what cumulative impact they might have had on the Applicant's overall functionality and capacity on or before his minimum qualifying period. On this basis, I am satisfied that the appeal has a reasonable chance of success.

[14] At the same time, I note that the Applicant's counsel has not referred to any of the medical evidence which could support a finding that the Applicant's numerous health injuries and impairments, when assessed cumulatively, severely impact him. There may be an issue as to whether there ought to be some basis -- whether documentary evidence or an applicant's own testimony -- upon which the General Division can conclude that an applicant is severely disabled, when assessing his various disabilities on a cumulative basis. Counsel may address these in any submissions.

CONCLUSION

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

[16] I invite the parties to also make submissions in respect of the form of hearing (i.e. whether it should be done by teleconference, videoconference, other means of telecommunication, in-person or by written questions and answers). If a party requests a hearing other than by written questions and answers, I invite that party to provide time estimates for oral submissions.

[17] This decision granting leave in no way presumes the result of the appeal on the merits of the case.

Janet Lew
Member, Appeal Division