



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. R. S.*, 2016 SSTADIS 161

Tribunal File Number: AD-16-539

BETWEEN:

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills
Development)**

Appellant

and

R. S.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: May 4, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated January 8, 2016. The General Division found that the Respondent had a severe and prolonged disability in September 2010, when he was involved in a motor vehicle accident, and determined that, according to section 69 of the *Canada Pension Plan*, payment of a Canada Pension Plan disability pension commenced as of January 2011. The Applicant seeks leave to appeal on the basis that the General Division erred by applying the wrong date of onset of disability. 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 General Division granted the Respondent a disability pension. The Applicant does not contest the finding that the Respondent was disabled, however, submits that the General Division erred with respect to the deemed date of disability and the effective payment date, by finding that the Respondent's application for a Canada Pension Plan disability pension had been received by the Applicant in April 2011. Counsel submits that the General Division thereby erred in its determination of the effective payment date.

[4] Counsel submits that, given the date of application of April 2013, the earliest the Respondent could be disabled was January 2012, fifteen months prior to the date the application was received by the Applicant. According to section 69 of the *Canada Pension Plan*, payment would commence four months later in May 2012.

ANALYSIS

[5] Subsection 58(1) of the Department of Employment and Social Development (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] Before leave can be granted, 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. The Federal Court of Canada recently endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[7] The General Division noted that the Respondent's application for a Canada Pension Plan disability pension was received by the Applicant on April 9, 2011. A review of the hearing file before the General Division indicates that the application was date-stamped April 11, 2013, two years later. The Applicant argues that the General Division based its decision on an erroneous finding of fact that it made without regard for the material before it.

[8] Given the evidence before the General Division, I am satisfied that the appeal has a reasonable chance of success that the General Division may have based its decision on an erroneous finding of fact that it made without regard for the material before it.

CONCLUSION

[9] The Application for leave to appeal is granted. This decision granting leave does not in any way prejudice the result of the appeal on the merits of the case. However, given the strength of the ground of appeal and the legal nature of the issue involved, I am inclined to proceed to hearing the matter on the record at the earliest opportunity available, short of any compelling submissions from the Respondent. The parties may make submissions within the time permitted under the DESDA, or may, by consent of the parties, seek to abridge the time to respond.

Janet Lew
Member, Appeal Division