



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *D. O. v. Minister of Employment and Social Development*, 2016 SSTADIS 153

Tribunal File Number: AD-15-1307

BETWEEN:

**D. O.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet Lew

DATE OF DECISION: April 29, 2016

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division dated October 8, 2015. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not “severe” by the end of her minimum qualifying period on December 31, 2010.

[2] The Applicant applied for leave to appeal on December 7, 2015. She enclosed a copy of a medical report dated November 17, 2015 from her family physician. Her representative filed submissions on February 12, 2016, in response to a letter from the Social Security Tribunal seeking additional information. For this application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

### **ISSUE**

[3] Does the appeal have a reasonable chance of success?

### **SUBMISSIONS**

[4] In the initial leave application, the Applicant submitted that she has been afflicted with medical problems for the past 17 years, and that her condition continues to deteriorate. She explained that her physicians did not retain her complete medical file, suggesting that she did not have sufficient medical evidence to support her claim. She indicates however that three physicians fully agree that her illness “is horrible to live with”. She enclosed a medical report dated November 17, 2015 from her family physician. Dr. Ryan S. Bystrom confirms that the Applicant has a longstanding history of generalized anxiety disorder with significant mood symptoms (mixed anxiety and depressive disorder). He confirmed that he has attempted to acquire old medical charts, but has been unsuccessful. The Applicant has also indicated that she has very limited financial means and that she is motivated to seek a Canada Pension Plan disability pension in order to alleviate her financial circumstances. The Applicant’s representative confirms that the Applicant and two physicians have endeavoured to obtain pre-2010 medical records, but they apparently have been destroyed or cannot be

located. He submits nonetheless that the General Division erred, as the hearing file did not include a medical report which the Applicant had filed.

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

## **ANALYSIS**

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out that the only grounds of appeal are 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] Before I can consider granting leave, I need to be satisfied that the reasons for appeal fall within at least one of the grounds of appeal and that the appeal has a reasonable chance of success. The Federal Court of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[8] The Applicant argues that the General Division erred as the hearing file did not include a copy of a medical report which she had filed with the Social Security Tribunal. Neither she nor her representative identified this medical report, nor did they provide a copy of it. Presumably, the Applicant is referring to Dr. Bystrom's report. It seems that the Applicant's representative suggests that the General Division should have included the November 17, 2015 report, but Dr. Bystrom did not prepare or produce this report until after the hearing had concluded. However, even if the report had been available at the time of the hearing before the General Division, it likely would not have been helpful to the Applicant. The fact that the Applicant's physician has diagnosed her as having a longstanding history

of generalized anxiety disorder with significant mood symptoms does not unto itself speak to the issue of the severity of her disability. Additionally, the November 17, 2015 report did not provide any additional information which was not already before the General Division. Dr. Bystrom had prepared a report date January 15, 2013 in which he indicated that the Applicant had a 15-year history of generalized anxiety disorder and panic attacks.

[9] It is unfortunate that the Applicant has been unable to retrieve her complete medical file, or that it is no longer available, but this does not constitute a ground of appeal under subsection 58(1) of the DESDA.

[10] A Canada Pension Plan disability pension is only available to an applicant who meets strict requirements under the *Canada Pension Plan*. These requirements include proving that one has a disability that is severe and prolonged. The Applicant's financial circumstances cannot be taken into consideration since this is not one of the enumerated grounds of appeal under subsection 58(1) of the DESDA.

[11] I am not satisfied that the appeal has a reasonable chance of success.

## **CONCLUSION**

[12] The Application for leave to appeal is dismissed.

*Janet Lew*  
Member, Appeal Division