Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *A. G. v. Minister of Employment and Social Development*, 2016 SSTADIS 169

Tribunal File Number: AD-16-515

BETWEEN:

A. G.

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 – Rescind or Amend Decision

DECISION BY: Janet LEW

DATE OF DECISION: May 6, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated January 14, 2016. 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 the end of his minimum qualifying period on December 31, 2010.

[2] The Applicant applied for leave to appeal on April 4, 2016. He enclosed a copy of a medical report February 26, 1999 from Dr. Blaine Beaton, his family physician at the time. He also enclosed a copy of a Pacemaker Follow-Up Report dated August 28, 2013. He submits that the General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner and without regard for the material before it. For the Applicant to succeed on this application, 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] The Applicant submits that medical evidence establishes that his disability has been severe and prolonged since at least 2010, if not the 1980s. He notes that he had been misdiagnosed with, and treated for, epilepsy. Subsequently doctors have diagnosed him as having severe syncope. The Applicant provided a copy of Dr. Beaton's letter dated February 26, 1999, which reads:

> Given [the Applicant's] level of training and past educational and occupational background it does not appear that [the Applicant] would be capable of working in any circumstance where a syncopal episode would not be dangerous to him. Therefore, I ask you to reconsider your decision to grant him Canada pension disability pension. I feel he probably does qualify through his combination of symptoms … don't think makes him employable under any reasonable circumstances.

[5] The Applicant argues that the information in the letter dated February 26, 1999 establishes that his disability is severe and prolonged. He also argues that his current physician is also of the opinion that he is incapable of any type of work, as his condition places him and anyone else at severe risk of injury.

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

ANALYSIS

[7] Subsection 58(1) of the 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 enumerated under subsection 58(1) of the DESDA 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.

[9] The Applicant argues that 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. He also argues that the General Division failed to consider the medical opinions, including the report dated February 26, 1999, which establish that he has severe syncope, and that he has a disability that has been severe and prolonged since well before the end of his minimum qualifying period.

[10] The General Division did not have a copy of the medical report dated February 26, 1999. Essentially, the Applicant is seeking to either introduce new evidence or to clarify existing evidence. In *Tracey*, the Federal Court determined that a tribunal is under no obligation to consider new evidence. Furthermore, failure to do so no longer constitutes a proper ground of appeal in and of itself.

[11] Aside from this consideration that the February 26, 1999 was not in evidence, it is doubtful that the General Division would have placed much weight on this February 1999 report, as there was more current medical information regarding the Applicant's disability, closer in time to the minimum qualifying period.

[1] Essentially, the Applicant is seeking a reassessment of the evidence. As the Federal Court held in *Tracey*, it is not appropriate for the Appeal Division, in determining whether leave should be granted or denied, to reassess the evidence or reweigh the factors considered by the General Division. Neither the leave, nor the appeal, provide opportunities to re-litigate or re-prosecute the claim. I am not satisfied that the appeal has a reasonable chance of success. It is not appropriate that I conduct a reassessment of the evidence.

CONCLUSION

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

Janet Lew
Member, Appeal Division