



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 170

Tribunal File Number: AD-16-567

BETWEEN:

D. C.

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: May 6, 2016

REASONS AND DECISION

INTRODUCTION

[1] At its core, this appeal is about whether an applicant can rely on a previously filed application for a Canada Pension Plan disability pension to determine the commencement date of payment of a disability pension.

[2] The Applicant seeks leave to appeal the decision of the General Division dated January 8, 2016. The General Division dismissed his appeal of a decision denying his request for greater retroactivity of payment of a Canada Pension Plan disability pension under the *Canada Pension Plan*. The payment date was based on the Applicant's second application for a Canada Pension Plan disability pension, made on March 13, 2013, though the Applicant sought payment based on when he filed his first application, on February 12, 1991.

[3] The Applicant filed an application requesting leave to appeal on April 14, 2016. He can only succeed on this application if I am satisfied that the appeal has a reasonable chance of success.

ISSUE

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

SUBMISSIONS

[5] The Applicant contends that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, as he did not receive a fair hearing. He alleges that the General Division was biased against him, as it made conflicting findings. He cites, in particular, the following:

- i. at page 8, paragraph 29, where the General Division wrote, "there is no information to determine if the [Applicant] was sent a reconsideration denial

letter and there is no appeal filed with respect to a reconsideration decision in the process of that earlier application” and

- ii. at page 6, paragraph 21, where the General Division wrote, “A printout of what remaining evidence there was on file respecting that earlier application indicates that the matter was reconsidered and the original decision was maintained on April 28, 1993 (Ex. GD 8, p. 6).”

[6] The Applicant argues that the General Division acknowledged at paragraph 21 of its decision that there was an original appeal, otherwise “what else would a reconsideration be referring to?”

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

ANALYSIS

[8] 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.

[9] Before leave can be granted, I need to be satisfied that the reasons provided in support of the appeal fall within the permitted 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.

[10] The Applicant argues that the General Division made conflicting findings, which necessarily shows that it was biased towards him. He asserts that, as the General Division was biased, he did not receive a fair hearing. The Applicant alleges that the conflict arises over the appeals process in connection with his first application made in February 1991. He claims that the General Division found, on the one hand, that he had failed to file an appeal of the Respondent's reconsideration decision, yet, on the other hand, determined that "the matter was reconsidered". The Applicant argues that this shows that there had to have been an appeal of his first application.

[11] The disability appeals process takes the following path, to the General Division:

- i. an applicant initiates the process by filing an application with the Respondent;
- ii. the Respondent makes an initial decision;
- iii. if dissatisfied with the Respondent's initial decision, the applicant can ask the Respondent to reconsider its initial decision;
- iv. the Respondent makes a reconsideration decision; and,
- v. if dissatisfied with the Respondent's reconsideration decision, the applicant can appeal it to the General Division (prior to April 1, 2013, an applicant would have appealed the Respondent's reconsideration decision to a Canada Pension Plan Review Tribunal);

[12] I am not persuaded that there is any conflict or any inconsistencies between paragraphs 21 and 29 of the General Division's decision. In response to the Applicant's question "what else would a reconsideration be referring to?" the Respondent made a reconsideration decision of its initial decision. The Applicant was entitled to seek an appeal of the reconsideration decision. The General Division indicated that there was no evidence before it that the Applicant had appealed the Respondent's reconsideration decision to a Canada Pension Plan Review Tribunal.

[13] Neither the Respondent, nor the Appeal Division, can grant greater retroactivity of payment of a disability pension than that set out by the *Canada Pension Plan*. The General Division simply did not have jurisdiction to deal with the first application, as there was no appeal to it of the Respondent's reconsideration decision.

[14] The Applicant alleges that the General Division was biased against him, and that, as a result, he did not receive a fair hearing. However, the Applicant's allegations of bias are based on what he perceives as conflicting findings. These allegations are not borne out, as there is no conflict between the paragraphs cited by him. I am not satisfied that the appeal has a reasonable chance of success.

CONCLUSION

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

Janet Lew

Member, Appeal Division