



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. S. L.*, 2016 SSTADIS 186

Tribunal File Number: AD-16-645

BETWEEN:

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

Appellant

and

S. L.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Hazelyn Ross

DATE OF DECISION: May 24, 2016

DECISION

[1] The Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), grants leave to appeal.

INTRODUCTION

[2] On February 8, 2016 the General Division of the Tribunal issued a decision in which it found that the Respondent was eligible for a disability pension under the *Canada Pension Plan*, (CPP). The General Division found that the Respondent had a severe and prolonged disability in December 2011. For payment purposes the General Division deemed the Respondent disabled as of April 2011 with payments to commence, pursuant to CPP, section 69. as of August 2011.

GROUND OF THE APPEAL

The Applicant appeals from that part of the General Division decision that decreed a deemed date of disability of April 2011. In the submission of Counsel for the Applicant this was an error because there was no basis in law or in the facts to find that the Respondent's deemed date of disability is April 2011. Counsel for the Applicant argued that the having determined that the Respondent had become disabled in December 2011, the General Division could not then find a deemed date of disability that was earlier than the date the Respondent had been found to have become disabled.

ISSUE

[3] The Appeal Division must decide if the appeal has a reasonable chance of success.

THE GOVERNING STATUTORY PROVISIONS

[4] Subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), govern the granting of leave to appeal. As provided by subsection 56(1) of the DESD Act, leave to appeal a decision of the General Division of the Tribunal is a preliminary step to an appeal before the Appeal Division. According to subsection 56(1) “an appeal to the Appeal Division may only be brought if leave to appeal is granted.” Subsection 58(3) provides that “the Appeal Division must either grant or refuse leave to appeal.”

[5] In order to obtain leave to appeal, subsection 58(2) of the DESD Act requires an applicant to satisfy the Appeal Division that their appeal would have a reasonable chance of success; otherwise the Appeal Division must refuse leave to appeal. Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[6] An applicant satisfies the Appeal Division that his appeal would have a reasonable chance of success by raising an arguable case in his application for leave¹. In *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41 and in *Fancy v. Canada (Attorney General)*, 2010 FCA 63 an arguable case has been equated to a reasonable chance of success.

Subsection 58(1) of the *Department of Employment and Social Development, (DESD), Act*, sets out the only three grounds of appeal, namely:-

- 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.

¹ *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[7] *Tracey v. Canada (Attorney General)*, 2015 FC 1300 supports the view that in assessing an application for leave to appeal the Appeal Division must first determine whether any of the Applicant's reasons for appeal fall within any of the stated grounds of appeal

ANALYSIS

[8] This Application turns on the General Division interpretation and application of paragraph 42(2)(b) of the CPP. Counsel for the Applicant submits that while the statute provides for what is known as "maximum retroactivity", this provision applies only to circumstances where a person has applied for disability benefits more than fifteen months after they were determined to have become disabled. Counsel argued that the general rule is that a person is deemed to have become disabled at the time when the person became disabled and the "maximum retroactivity provision" operates as an exception to the general rule. Accordingly, the General Division breached paragraph 58(1)(b) of the DESD Act.

[9] Counsel for the Applicant relies solely on the statutory provisions. Having examined these, the Appeal Division is satisfied that the Applicant has raised an arguable case meriting the grant of leave.

CONCLUSION

[10] Counsel for the Applicant submitted that the General Division erred in law in its application of paragraph 42(2)(b) of the Canada Pension Plan. For the reasons set out above the Appeal Division is satisfied that Counsel's arguments raise grounds of appeal that would have a reasonable chance of success. Accordingly, the Application is granted.

Hazelyn Ross
Member, Appeal Division