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

Citation: *R. M. v. Minister of Employment and Social Development,* 2016 SSTADIS 189

Appeal No: AD-15-1202

BETWEEN:

R. M.

Appellant

and

Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

SOCIAL SECURITY TRIBUNAL MEMBER: Janet Lew

DATE OF DECISION: May 30, 2016

Canada

REASONS AND DECISION

OVERVIEW

[1] This case is about whether it is appropriate for the Appeal Division to conduct a reassessment of the medical evidence.

FACTUAL BACKGROUND

[2] The key facts for the purposes of this appeal are set out below.

[3] On August 18, 2015, the General Division summarily dismissed the Appellant's appeal in respect of her claim for a Canada Pension Plan disability pension, on the basis that she did not have sufficient valid contributions to the Canada Pension Plan. The General Division found that the Appellant's contributory period ran from 2004 to 2010 and that she had contributions to the Canada Pension Plan in only two years within the contributory period. The General Division summarily dismissed the Appellant's appeal, given that it was satisfied that the appeal did not have a reasonable chance of success.

[4] On October 27, 2015, the Appellant appealed the decision of the General Division, alleging that the General Division failed to observe a principle of natural justice and also made erroneous findings of fact.

ISSUES

[5] This appeal raises three primary issues: one, whether it was appropriate for the General Division to summarily dismiss the Appellant's appeal; secondly, whether the Appellant has raised any grounds of appeal under subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) and finally, whether it is appropriate for the Appeal Division to conduct a reassessment of the medical evidence.

SUBMISSIONS

[6] The Appellant appealed the decision of the General Division, alleging that the General Division failed to observe a principle of natural justice. The Appellant explains that

she has been the subject of medical malpractice, which has resulted in numerous ongoing medical problems. She also suggests that she has been unable to obtain complete or accurate supporting medical opinions from some of her physicians. She however recently received some additional information and filed them to support her claim to a disability pension.

[7] In additional submissions filed on January 21, 2016, the Appellant argues that the General Division erred as it did not consider medical reports which establish the severity and prolonged nature of her disability. She argues that the General Division should have considered that she was unable to make any additional contributions to the Canada Pension Plan because of her disability. She further argues that the General Division made erroneous findings of fact, though she did not specify what they were. She does not dispute the General Division's finding that she had two years of contributions to the Canada Pension Plan.

[8] The Respondent's counsel filed submissions on January 22, 2016. The Respondent's counsel submits that the General Division correctly stated and applied the test for a summary dismissal. He contends that the General Division did not err in its application of the law to the facts and that it is clear from the record that was before the General Division that the Appellant did not have sufficient contributions during her contributory period to qualify for a disability pension under the *Canada Pension Plan.* The Respondent argues that, given the uncontested facts and the applicable law, the appeal is bereft of any chance of success and was properly summarily dismissed.

ANALYSIS

[9] Subsection 58(1) of the DESDA sets out the grounds of appeal as being limited to the following:

i. the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

ii. the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

iii. 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.

(a) Summary dismissal procedure

[10] Subsection 53(1) of the DESDA requires the General Division to summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success. If the General Division either failed to identify the test or misstated the test altogether, this would qualify as an error of law.

[11] Here, the General Division correctly stated the test for a summary dismissal by citing subsection 53(1) of the DESDA. It is insufficient, however, to simply recite the test for a summary dismissal set out in subsection 53(1) of the DESDA, without properly applying it. Having correctly identified the test, the second step required the General Division to apply the law to the facts.

[12] In determining the appropriateness of the summary dismissal procedure and deciding whether an appeal has a reasonable chance of success, a decision-maker must determine whether there is a "triable issue" and whether there is any merit to the claim. As long as there is an adequate factual foundation to support an appeal and the outcome is not "manifestly clear", the matter is not appropriate for a summary dismissal. A weak case is not appropriate for a summary disposition, as it necessarily involves assessing the merits of the case and examining the evidence and assigning weight to it.

[13] The General Division found that it was empowered only to the extent of its governing statute and that it was required to interpret and apply the provisions as set out in the *Canada Pension Plan.* It found the provisions of the *Canada Pension Plan* to be clear and the evidence unequivocal. The General Division also noted that it did not have any equitable jurisdiction to consider extenuating circumstances to disregard the contributory requirements under the *Canada Pension Plan.*

[14] The General Division found that there was no chance for the Appellant to succeed on an appeal, given the law and the facts. The Appellant does not dispute the fact that she had two years of contributions within her contributory period.

[15] As the General Division was satisfied that the appeal was without any merit, it rightly concluded that the appeal had no reasonable chance of success, and properly summarily dismissed it on that basis.

(b) Grounds of appeal

[16] Setting aside the issue of the appropriateness of the summary dismissal procedure, the Appellant alleges that the General Division failed to observe a principle of natural justice and also made erroneous findings of fact.

[17] The Appellant has not identified the alleged erroneous findings of fact. She would also need to demonstrate that the General Division based its decision on those erroneous findings of fact, and that the findings were made in a perverse or capricious manner or without regard for the material before it. The only factual findings which the General Division made are set out in paragraph 13 of its decision. Although the Appellant has provided an explanation of why she was unable to make further contribution to the Canada Pension Plan, she otherwise does not contest the facts set out in paragraph 13 of the decision. I am not satisfied that the Appellant has established 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.

[18] The Appellant alleges that the General Division failed to observe a principle of natural justice. These allegations stem from the Appellant’s belief that she has received inadequate medical care and treatment and from the fact that she has been unable to secure supporting medical opinions from some of her physicians. These allegations do not speak to any of the grounds of appeal under subsection 58(1) of the DESDA, for it must be a failure on the part of the General Division, rather than any external parties. The Appellant has not identified any particular failure to observe a principle of nature justice on the part of the General Division.

[19] The Appellant argues that the General Division should have considered the medical opinions and records before it. However, paragraph 44(1)(b) of the *Canada Pension Plan* sets out several criteria which an applicant must meet to qualify for a Canada Pension Plan disability pension. It is insufficient for an application to show that she has a disability, for she must also have made "contributions for not less than the minimum qualifying period", amongst other conditions. If an applicant does not meet one of the criteria under paragraph 44(1)(b) of the *Canada Pension Plan*, then it is unnecessary to consider the other criteria.

[20] As the Federal Court of Appeal in *Miceli-Riggins v. Canada (Attorney General)*, 2013 FCA 158, stated:

> [69] . . . The *Plan* is not supposed to meet everyone's needs. Instead, it is a contributory plan that provides partial earnings- replacement in certain technically-defined circumstances . . . See *Granovsky v. Canada (Minister of Employment and Immigration*), 2000 SCC 28 (CanLII), 2000 SCC 28 at paragraph 9, 2000 SCC 28 (CanLII), [2000] 1 S.C.R. 703.
>
> [70] Indeed, it cannot even be said that the *Plan* is intended to bestow benefits upon demographic groups of one sort or another. Instead, it is best regarded as a contributory-based compulsory insurance and pension scheme designed to provide some assistance – far from complete assistance – to those who satisfy the technical qualification criteria.
>
> [71] Like an insurance scheme, **benefits are payable on the basis of highly technical qualification criteria**.
>
> . . .
>
> [74] In the words of the Supreme Court,
>
>> The *Plan* was designed to provide social insurance for Canadians who experience a loss of earnings due to retirement, disability, or the death of a wage-earning spouse or parent. It is not a social welfare scheme. It is a contributory plan in which **Parliament has defined both the benefits and the terms of entitlement**, including the level and duration of an applicant's financial contribution.
>>
>> (*Granovsky*, *supra* at paragraph 9.) (My emphasis)

[21] I am not satisfied that the General Division was required to evaluate the medical evidence before it, in light of the fact that the Appellant did not have sufficient valid contributions to the Canada Pension Plan.

(c) Reassessment

[22] For the most part, the Appellant seeks a reassessment of the medical evidence. She has also filed additional medical records in support of her claim to a disability pension.

[23] The Federal Court recently pronounced in *Canada (Attorney General) v. O'Keefe,* 2016 FC 503 that an appeal to the Appeal Division does not allow for new evidence and is limited to the three grounds of appeal listed in subsection 58(1) of the DESDA. From this, it is apparent that an appeal does not provide an opportunity for a reassessment. There is no suggestion either by the Appellant that any additional medical records address any of the grounds of appeal listed in subsection 58(1) of the DESDA.

CONCLUSION

[24] Given the considerations above, the appeal is dismissed.

Janet Lew
Member, Appeal Division