



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. R. N.*, 2016 SSTADIS 225

Tribunal File Number: AD-16-565

BETWEEN:

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

Applicant

and

R. N.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Janet Lew

DATE OF DECISION: June 20, 2016

REASONS AND DECISION

OVERVIEW

[1] This appeal revolves around the question of whether the General Division has the authority to issue a corrigendum of its decision rendered on January 19, 2016.

[2] The General Division found that the Respondent had a severe and prolonged disability in April 2011. The General Division held that, according to section 69 of the *Canada Pension Plan*, payment of a Canada Pension Plan disability pension commences four months after the deemed date of disability. The General Division determined that payments would commence as of August 2011. From this, one necessarily would infer that the General Division determined that the deemed date of disability was the same as when the disability actually arose, which in this case was April 2011.

[3] The Applicant filed an application requesting leave to appeal on April 15, 2016, on the basis that the General Division erred with respect to the deemed date of disability and the effective payment date, resulting in ordering payment as of August 2011, rather than January 2012. The Applicant otherwise does not contest the finding of a disability.

[4] In response to the application requesting leave to appeal, the General Division issued a corrigendum on April 27, 2016. The General Division added the following paragraph to its decision:

[53] For payment purposes, a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2)(b) CPP). The application was received in December 2012 therefore the Appellant is deemed disabled in September 2011.

[5] The General Division also corrected the date when payment of the disability pension commenced to January 2012. The Applicant indicated in a letter dated May 27, 2016 that it nonetheless wishes to proceed with the application and the hearing of this appeal, on the basis that the General Division exceeded its authority when it issued a corrigendum. By letter dated June 1, 2016, the Respondent confirmed that she does not contest either the application requesting leave to appeal or the appeal and that she agrees that

payment of a disability pension should begin as of January 2012, rather than August 2011. The Applicant however is requesting not only that the appeal be allowed, but also that the matter be referred to the General Division for reconsideration.

[6] Given the Respondent's position in this matter, I will consider both the application requesting leave to appeal and the appeal together.

ISSUE

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

SUBMISSIONS

[8] The Applicant's initial submissions concerned the determination of the deemed date of disability and the effective payment date of a disability pension.

[9] The Applicant submits that, for the purpose of payment, the General Division correctly referred to section 69 of the *Canada Pension Plan*, stating payments would commence four months after the deemed date of disability, but in its original decision rendered on January 19, 2016, the General Division did not take into account paragraph 42(2)(b) of the *Canada Pension Plan* to determine the date of deemed disability.

[10] Pursuant to paragraph 42(2)(b) of the *Canada Pension Plan*, the earliest the Respondent could be deemed disabled was the fifteenth month prior to the date the application was received by the Applicant. The Applicant argues that since the Respondent's disability application was received by the Applicant in December 2012, the earliest the Respondent could be deemed disabled was September 2011.

[11] The Applicant further argues that pursuant to paragraph 42(2)(b) and section 69 of the *Canada Pension Plan*, the date of payment should be based on the date of application and not the date when the disability actually arose. In this case, the date of payment would be January 2012.

[12] The corrigendum issued by the General Division corrected the errors identified by the Applicant. However, the Applicant explains that it proceeded by way of an application

requesting leave to appeal rather than by requesting a corrigendum because the reasoning of the General Division “demonstrated an error of law and not only a clerical error”. The Applicant further submits that as the Appeal Division is seized with the appeal, a decision granting leave and referring the matter to the General Division for determination is warranted.

ANALYSIS

[13] Subsection 58(1) of the *Department of Employment and Social Development Act* 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.

[14] Before leave can be granted, I need to be satisfied that the reasons for appeal fall within any of the grounds of appeal and that the appeal has a reasonable chance of success. The Federal Court of Canada recently endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[15] There is no dispute that the General Division erred in the first instance when it effectively determined that the date of deemed disability coincided with the onset of the Respondent’s disability. After the General Division issued a corrigendum amending its decision, the parties could have entered into a settlement agreement or the Applicant could have formally abandoned or withdrawn the application requesting leave to appeal, to dispose of this matter. However, the Applicant argues that a corrigendum is appropriate only when there is a clerical error, and in this instance, the General Division’s reasoning “demonstrated an error of law”, rather than a clerical error.

[16] The legal authorities indicate that issuing a corrigendum is not limited to instances where there is a clerical slip. They can also be used to correct accidental slips, omissions or ambiguity. Beyond this, however, the courts have indicated that it is inappropriate to resort to them. In *Dhillon v. Jaffer*, 2016 BCCA 119, the Appellant sought a corrigendum from the trial court. The court responded, “Resort to the slip rule or the use of a corrigendum is out of the question ... There was no oversight or clerical error”.

[17] In *Cité de Jonquière v. Munger et al.*, [1964] S.C.R. 45, an arbitration council made an award setting the terms of a collective agreement, retroactive 13 months. The legislation stipulated that an award could not be retroactive for more than 12 months. Subsequently, on a motion by one of the parties, the arbitration council amended the award on the ground of an alleged clerical error, to provide that the order would become effective as of the date of the original award, i.e. there was no retroactivity. The Supreme Court of Canada held that the council had no power to correct its original award. The Court wrote:

I wish to adopt the following passage in the reasons of Montgomery J.

I am satisfied that the council had the right to interpret the award but not to amend it. This does not mean, however, that it did not have the right to correct a simple clerical error. Anybody having quasi-judicial powers must have such a right, otherwise the consequences of a simple slip in drafting an award might be disastrous. . .

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I find myself in complete agreement with the reasons of Montgomery J. for holding that the error, if error it was, which the majority of the Council purported to correct by the document of February 24, 1954, was not a clerical error.

[18] The facts in *Jonquière* are largely indistinguishable from the facts in the proceedings before me, in that the error which the General Division corrected was not a clerical error, accidental slip, omission or ambiguity. There is nothing in the original decision rendered on January 19, 2016 which could have indicated that the General Division had given any consideration to paragraph 42(2)(b) of the *Canada Pension Plan*, or to the fact that a claimant cannot be deemed disabled more than fifteen months before the Minister received an application for a disability pension.

[19] Given my findings, I am not only satisfied that the appeal has a reasonable chance of success but that the appeal should also be allowed.

DISPOSITION

[20] The Applicant requests that, the appeal having been allowed, that the matter be referred to the General Division for reconsideration. Subsection 59(1) of the DESDA sets out the powers of the Appeal Division and includes the authority to give the decision that the General Division should have given. I find that it is appropriate in the circumstances of this case to exercise my powers accordingly. I also find support for this from *D'Errico v. Canada (Attorney General)*, 2014 FCA 95, where the Federal Court of Appeal noted the words of the Supreme Court of Canada in *Alberta (Information and Privacy Commissioner) v. Alberta Teachers' Association*, 2011 SCC 61, at paragraph 55 that, "remitting the issue ... may undermine the goal of expedient and cost-efficient decision making..."

[21] The application for leave to appeal and the appeal are both granted, and the decision of the General Division varied accordingly. Pursuant to paragraph 42(2)(b) of the *Canada Pension Plan*, the Respondent is deemed to have become disabled as of September 2011, which is 15 months before the date her application was received. Pursuant to section 69 of the *Canada Pension Plan*, payment of a Canada Pension Plan disability pension commences four months after the date the Respondent is deemed to have become disabled. As the Respondent is deemed disabled in September 2011, payments commence effective January 2012.

Janet Lew
Member, Appeal Division