



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. T. v. Minister of Employment and Social Development*, 2016 SSTADIS 264

Tribunal File Number: AD-16-871

BETWEEN:

G. T.

Applicant

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

LEAVE TO APPEAL DECISION BY: Janet Lew

DATE OF DECISION: July 11, 2016

REASONS AND DECISION

OVERVIEW

[1] The Applicant seeks leave to appeal the decision of the General Division dated March 28, 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”.

[2] The Applicant filed an application requesting leave to appeal on June 27, 2016, on the ground that the General Division erred in law.

[3] For this application to succeed, I must be 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 alleges that the General Division erred in its interpretation of “severe” by basing its decision solely on the documentary evidence and not considering the impact of his disability on activities of daily living. The Applicant contends that the General Division should have also considered his emotional state, along with his fears and anxiety, when it assessed the severity of his disability. The Applicant notes that he is no longer able to lead the lifestyle that he once led, and that he is unable to perform any of the tasks for which he has been trained.

[6] The Social Security Tribunal provided a copy of the leave materials to the Respondent. However no written submissions were received from the Respondent.

ANALYSIS

[7] 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.

[8] Before I can consider granting leave, I need to be satisfied that the reasons for appeal fall within the 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.

a) **Assessment of severity**

[9] The Applicant testified that he faces several limitations and restrictions which have affected his lifestyle and activities. The Applicant stopped driving his truck and, although later contemplated driving a forklift, anticipated that he would have problems with sitting. The Applicant rarely goes out, even to attend religious services. He no longer mows the lawn and finds it too difficult to do any gardening. The Applicant's witness confirmed that the Applicant can no longer participate or work at the temple as much as he did in past. The Applicant submits that the General Division failed to consider this evidence regarding how his lifestyle has been affected, and instead focused on the documentary evidence as the basis for its assessment of the severity of his disability.

[10] Paragraph 42(2)(a) of the *Canada Pension Plan* defines disability. As the General Division noted, a claimant is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. It is a rigid test which requires a

decision-maker to determine whether an applicant is incapable regularly of pursuing any substantially gainful occupation.

[11] The General Division accepted the medical evidence and the Applicant's oral evidence that he can no longer do much physically demanding work because of his knee. From this, one can infer that the General Division also accepted that the Applicant likely would face restrictions in other facets of his life outside work.

[12] While doubtless the Applicant's disability restricts him from being able to pursue activities in which he participated in past to the same extent or at all, in any event they are not necessarily relevant to the test of severity of disability under the *Canada Pension Plan*. The fact that the Applicant can no longer engage in certain activities however would not establish severity unto itself. In this particular case, it appears that the General Division was mindful that the Applicant is faced with various physical limitations, although it may not have explicitly fully set out the evidence in its analysis. I am not satisfied that the appeal has a reasonable chance of success on this ground.

(b) Emotional state

[13] The Applicant argues that the General Division failed to consider the totality of the evidence, as it did not address his emotional state, fear or worries. However, apart from raising this in his letter of January 27, 2016 (GD5-3), he did not point to any documentary evidence of his emotional state. I find that there is no evidence to corroborate his assertion that these were issues which might have affected his capacity regularly of pursuing any substantially gainful occupation. I am therefore not satisfied that the appeal has a reasonable chance of success on this ground.

CONCLUSION

[14] The application for leave to appeal is dismissed. I note, however, that the Applicant still has the opportunity to reapply for a disability pension because the information that is available concerning his Canada Pension Plan contributions indicates that his minimum qualifying period is not scheduled to end before December 31, 2016.

Janet Lew
Member, Appeal Division