



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. M. D.*, 2016 SSTADIS 293

Tribunal File Number: AD-16-346

BETWEEN:

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

Applicant

and

M. D.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

LEAVE TO APPEAL DECISION BY: Janet Lew

DATE OF DECISION: August 3, 2016

REASONS AND DECISION

OVERVIEW

[1] At its core, this case is about whether the Respondent is entitled to a Canada Pension Plan disability pension. The Applicant filed an application requesting leave to appeal the decision of the General Division, alleging that it erred in law when it granted the Respondent a disability pension. For this application to succeed, I must be satisfied that the appeal has a reasonable chance of success.

FACTS

[2] The relevant facts, for the purposes of this application, are as follows:

- i. the Respondent made valid contributions to the *Canada Pension Plan* in the years 2008, 2009, 2010 and 2013. The General Division found that the Respondent's minimum qualifying period ended on December 31, 2013 and;
- ii. the General Division found that the Respondent became disabled for the purposes of the *Canada Pension Plan* as of November 2010, when she was no longer able to perform her modified work as a cashier, and that payment of a pension would commence as of March 2011.

SUBMISSIONS AND ANALYSIS

[3] 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.

[4] 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.

[5] The Applicant points out that one of the requirements to qualify for a disability pension under the *Canada Pension Plan* is that a claimant must meet the contributory requirements under the *Canada Pension Plan*.

[6] Subparagraph 44(2)(b)(ii) and paragraph 56(5)(b) of the *Canada Pension Plan* stipulate that the contributory period ends with the month in which the contributor is determined to have become disabled.

[7] The Applicant argues that, as the General Division found the Respondent became disabled in November 2010, she can no longer rely on or include the year 2013 for the purposes of calculating her minimum qualifying period. This leaves the Respondent with only three out of six years of valid contributions, rather than the required four out of six years for persons who have fewer than 25 years of valid contributions to the Canada Pension Plan. The Applicant contends that the Respondent therefore does not meet the contributory requirements. The Applicant submits that the General Division erred in law as it granted a disability pension, without considering whether she qualified under the *Canada Pension Plan*.

[8] There is an arguable case as to whether the General Division determined whether the Respondent met the requirements for a disability pension under subparagraph 44(2)(b)(ii) and paragraph 56(5)(b) of the *Canada Pension Plan*. I am satisfied that the appeal has a reasonable chance of success on this ground.

CONCLUSION

[9] The application for leave to appeal is granted.

[10] This decision granting leave does not in any way prejudge the result of the appeal on the merits of the case.

Janet Lew
Member, Appeal Division