



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *C. A. v. Minister of Employment and Social Development*, 2016 SSTADIS 301

Tribunal File Number: AD-16-796

BETWEEN:

**C. A.**

Applicant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: August 5, 2016

## REASONS AND DECISION

### INTRODUCTION

[1] On March 9, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* (CPP) was not payable from October 1, 2012 onward. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on June 6, 2016.

### ISSUE

[2] Whether the appeal has a reasonable chance of success.

### THE LAW

[3] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division (AD) within 30 days after the day on which the decision appealed from was communicated to the appellant. Further, “the Appeal Division may allow further time within which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.”

[4] According to subsections 56(1) and 58(3) of the DESD Act, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

[5] 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] Subsection 58(1) of the DESD Act states that the only grounds of appeal are 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.

## **SUBMISSIONS**

[7] The Applicant's reasons for appeal can be summarized as follows:

- a) The GD failed to observe a principle of natural justice in that the benchmark is measured against income and is out of date;
- b) The GD erred in law in that the law is based on outdated criteria;
- c) The GD based its decision on erroneous findings of fact in that it:
  - 1. The fact of his working does not mean it is safe or in the best interests of others that he continue to work;
  - 2. He is disabled and has a rare condition that is not treatable;
  - 3. It appears that he is capable when he is not; and
- d) He plans on gathering new information to submit to the Tribunal.

## **ANALYSIS**

[8] The Applicant was granted and received a disability pension based on a significant visual impairment.

[9] In March 2013, the Respondent determined that the Applicant had regained capacity to work at substantially gainful employment and decided to cease benefits to the Applicant effective October 1, 2012.

[10] The Applicant requested a reconsideration of the Respondent's decision. The Respondent maintained its decision to terminate the Applicant's disability pension after September 2012.

[11] The Applicant appealed that decision to the GD of the Tribunal.

[12] The GD decided to proceed by way of questions and answers.

[13] The issue before the GD was whether the Applicant ceased to have a severe and prolonged disability in September 2012. It stated the onus of proof as "the Respondent must prove on a balance of probabilities that the Appellant regained capacity to work at substantially gainful occupation in September 2012."

### **Grounds and Reasons for Appeal**

[14] The GD reviewed the Applicant's appeal and rendered a written decision that was understandable, sufficiently detailed and provided a logical basis for the decision. The GD weighed the documentary evidence and gave reasons for its analysis of the evidence and the law. These are proper roles of the GD.

[15] The Applicant argues that the GD failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction because the GD based its decision on out of date criteria. However, the GD based its decision on the applicable legislation, the relevant jurisprudence and the evidence of the Applicant's work at two jobs since 2012 that was before it. It did not fail to observe a principle of natural justice or commit an error in jurisdiction.

[16] Before the GD, the Applicant advanced similar arguments to those in the Application. The Applicant's evidence was included, in detail, in the GD decision on pages 3 to 7. The Applicant's submissions before the GD were summarized on pages 8 and 9 and discussed at pages 10 to 11; they included many of the points in support of the Application and noted in paragraph [7] above.

[17] The GD stated the correct legislative basis and legal tests for capacity to work in its decision. It found that the Respondent has met its onus to prove that the Applicant has had

capacity to work at substantially gainful occupation since October 1, 2012, having regained capacity in September 2012, and, therefore, he has not had a disability under the CPP from October 1, 2012 onward.

[18] The Applicant suggests that he will “have new information” to submit “soon”. However, it has been sixty (60) days since the Applicant filed his Application, and nothing else has been received from him. The Tribunal must proceed as informally and as quickly as permitted by the circumstances and the considerations of fairness and natural justice.

[19] In the circumstances, the AD will proceed with a decision on the Application, as I am satisfied that the appeal record and the Application are sufficient to decide whether the appeal has a reasonable chance of success.

[20] For the most part, the Application repeats the Applicant’s evidence and submissions before the GD. Also, the Application reargues the Applicant’s case anew before the AD.

[21] Once leave to appeal has been granted, the role of the AD is to determine if a reviewable error set out in subsection 58(1) of the DESD Act has been made by the GD and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the AD to intervene. It is not the role of the AD to re-hear the case *de novo*. It is in this context that the AD must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[22] I have read and carefully considered the GD’s decision and the record. There is no suggestion that the GD failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact which the GD may have made in a perverse or capricious manner or without regard for the material before it, in coming to its decision.

[23] In order to have a reasonable chance of success, the Applicant must explain how at least one reviewable error has been made by the GD. The Application is deficient in this regard, and I am satisfied that the appeal has no reasonable chance of success.

## **CONCLUSION**

[24] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division