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

Citation: *Minister of Employment and Social Development v. S. B.,* 2016 SSTADIS 330

Tribunal File Number: AD-16-322

BETWEEN:

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

Applicant

and

S. B.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Hazelyn Ross

Date of Decision: August 23, 2016

REASONS AND DECISION

INTRODUCTION

[1] On November 17, 2015 the General Division of the Social Security Tribunal of Canada, (Tribunal), determined that {a disability pension under the *Canada Pension Plan* was payable to the Respondent. The Applicant has filed an application for leave to appeal, the General Division decision (Application), with the Appeal Division of the Tribunal.

ISSUE

[2] The Appeal Division must decide if the appeal has a reasonable chance of success.

THE LAW

What must the Applicant establish on an Application for Leave to Appeal?

[3] 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".

[4] Case law has established that on an Application for Leave to Appeal the hurdle that an Applicant must meet is a first, and lower, one than that which must be met on the hearing of the appeal on the merits. To grant leave the Appeal Division must be satisfied that the appeal would have a reasonable chance of success. A reasonable chance of success has been equated with an arguable case[1]; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41; *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

[5] 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.

[1] *Kerth v. Canada (Minister of Human Resources Development)*, [1999] FCJ No. 1252 (FC).

[6] In order to grant the Application, the Appeal Division must be satisfied that the Applicant has put forward reasons for the application and the appeal that fall within the grounds of appeal set out in subsection 58(1).

SUBMISSIONS

[7] Counsel for the Applicant submitted that in granting the Respondent disability benefits, the General Division erred in law by failing to find that he had become disabled within his minimum qualifying period, (MQP). Counsel for the Applicant submitted that based on paragraph 44(1)(b)(ii) of the CPP, the Respondent had an MQP of December 31, 2006. Counsel for the Applicant also submitted that, per subsection 44(2.1) of the CPP the Respondent had a potential pro-rated MQP of January 31, 2007. To be eligible for a disability benefit, the General Division had to find that the Respondent became disabled either on or before December 31, 2006; or between January 1, 2007 and January 31, 2007.

[8] The General Division found that the Respondent had a severe and prolonged disability as of May 2007, which is after the end of both his MQP of December 31, 2006; and was also outside of the pro-rated MQP period. Counsel for the Applicant submitted that this was an error of law as paragraph 44(1)(b)(i) of the CPP required the General Division to find that the Respondent had become disabled on or before December 31, 2006 .

[9] Counsel for the Applicant also submitted that the General Division could not apply the proration provisions in subsection 44(2.1) of the CPP because this provision could be applied only in the year in which “a person is considered to have become disabled;” and during the prorated time period. Counsel for the Applicant made the further argument that as there had been no “triggering event” in 2007, there was no legal basis for the application of the proration provisions. Accordingly, the Respondent did not qualify for a disability benefit.

ANALYSIS

[10] To qualify for a CPP disability benefit, an applicant must meet the criteria set out in subsection 44(1)(b) of the CPP. Thus, the applicant must be less than sixty-five years old and not be in receipt of a retirement pension. In addition, the applicant must also be disabled and he

or she must have made contributions to the CPP for not less than the minimum qualifying period.

[11] It is accepted that the minimum qualifying period is important because this is the period during which an applicant must be found to have become disabled. Thus, where as in the Respondent's case an applicant is found to have become disabled after the end of the MQP an arguable case can be raised that this is an error of law. On the facts of the case, the Appeal Division is satisfied that the Applicant has raised such a case and that the appeal has a reasonable chance of success. Accordingly, leave to appeal is granted.

CONCLUSION

[12] The Application is granted.

[13] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Hazelyn Ross
Member, Appeal Division