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

Citation: *B. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 321

Tribunal File Number: AD-16-454

BETWEEN:

B. S.

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: Hazelyn Ross

DATE OF DECISION: August 18, 2016

DECISION

[1] The Application for Leave to Appeal is refused.

BACKGROUND

[2] The Applicant seeks leave to appeal, (the Application), from the decision of the General Division of the Social Security Tribunal, (the Tribunal), issued on December 17, 2015. In its decision, the General Division dismissed the Applicant's application for a disability pension pursuant to paragraph 42(2)(a)(i) of the *Canada Pension Plan,* (CPP). The General Division decision was rendered relative to a minimum qualifying period, (MQP), that ended on December 31, 2015.

GROUNDS OF THE APPLICATION

[3] The Applicant originally requested leave to appeal on the basis that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction. In other words, that the General Division breached paragraph 1(a) of subsection 58(10 of the *Department of Employment and Social Development,* (DESD), *Act*. In a subsequent submission to the Appeal Division he stated that the General Division also erred in law.

THE LAW

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

[4] 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.

[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". 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 Applicant has put forward reasons for the appeal that fall within the grounds of appeal set out in subsection 58(1). The Appeal Division must also 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.

ISSUE

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

ANALYSIS

The General Division failed to observe a principle of natural justice?

[7] The Applicant alleged that the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction by reaching conclusions that, in his view, runs counter to the medical evidence. He submitted that there was evidence and supporting documentation that he was unable to work and that the General Division erred in finding he had retained work capacity.

[8] The Applicant also submitted that his health condition, both mental and physical, remains unstable with no signs of improvement. As proof of his incapacity, he attached a letter from his treating psychiatrist, Dr. Surapaneni, dated March 15, 2016, in which Dr. Surapaneni states that the Applicant is unfit for work

[9] The principles of natural justice are concerned with ensuring that parties are able to present their cases fully; to know the case they have to meet; and to have their cases heard by an impartial decision-maker. In the administrative law context "natural justice" is particularly

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

concerned with fairness which embodies all of the above concepts and also extends to procedural fairness.

[10] It is clear from the Applicant's submissions that he disagrees with the General Division's decision. However, it is not clear to the Appeal Division how the General Division breached a principle of natural justice in coming to its decision. The Applicant has not shown how the General Division prevented him from presenting his case; or from knowing the case he had to meet; or was impartial; or otherwise acted unfairly towards him. A denial of an appeal does not automatically a breach of natural justice make. The Appeal Division finds that a breach of natural justice did not occur. This argument does not disclose a ground of appeal that would have a reasonable chance of success.

The General Division erred in law

[11] The Applicant submitted that the General Division erred in law by "referring to earlier decisions and by drawing a parallel between a reported case and the MQP framework". (AD1B-3) He also submitted that in its decision the General Division set out medical evidence that concluded he was disabled. He reiterated that he suffers from multiple impairments and argued that the General Division did not have to find that each of his impairments were severe before it could find that his overall condition was severe. Finally, the Applicant stated that his employer modified his work significantly and that the Respondent made no submissions.

The General Division erred by referring to earlier decisions and by drawing a parallel between a reported case and the MQP framework.

[12] The Applicant's minimum qualifying period, (MQP), or the date by which he had to be found disabled, ended on December 31, 2015. The General Division hearing was held on October 26, 2015. Thus, the General Division had to determine whether it was more likely than not that the Applicant had a severe and prolonged disability on or before the date of the hearing. In its decision the General Division referred to pertinent case law. It set out the principles for which the case law stands. The General Division referred to *Villani v. Canada (A.G.)*, 2001 FCA 248. It indicated that *Villani* stood for the principle that claimants must be able to demonstrate by means of medical evidence and evidence of employment efforts that they suffer from a disability that is severe and prolonged. Similarly, the General Division

referred to *Inclima v. Canada (A.G.)*, 2003 FCA 117 for the principle that where there is evidence of work capacity, a claimant must show that his efforts at obtaining and maintaining employment were unsuccessful because of his health condition.

[13] The General Division referred to *Dhillon v. MHRD* (November 16, 1998), CP 5834 (PAB) for the principle that appellants bear the onus of establishing their appeals on a balance of probabilities. The General Division also referred the decision of *Canada (MHRD) v. Rice*, 2002 FCA 47 for the proposition that labour market conditions do not dictate whether or not a claimant is entitled to a CPP disability pension.

[14] It is well accepted that the Tribunal operates within the parameters of its governing legislation: *Tracey v. Canada (Attorney General),* 2015 FC 1300. In this regard, the General Division and the Appeal Division look to the case law and the legal principles set out by the case law, in regard of the legislation, when deciding appeals. Therefore, it cannot be an error of law for the General Division to refer to earlier case law and to draw parallels between the legal principles set out therein and the Applicant's case. The Appeal Division finds that this submission does not disclose a ground of appeal that would have a reasonable chance of success.

The General Division set out medical evidence concluded the Applicant was disabled.

[15] The General Division had before it extensive medical evidence that it set out at paragraphs 8 through 26 of the decision. It also had medical reports from Dr. Surapaneni and Dr. Ljubinka Segedi. Dr. Surapaneni opined that the Applicant was anxious, depressed and accident prone. He recommended that the Applicant be awarded CPP Disability benefits. (GD3-36). In a letter to Dr. Segedi, Dr. Surapaneni diagnosed the Applicant as suffering from anxiety disorder associated with depression. (GD3-48) He prescribed Prozac 20mg. per day and Lorazepam 0.5 mg. In his report dated June 19, 2015, Dr. Surapaneni increased the dosage of Lorazepam to 1 mg. He also noted that it was the Applicant's spouse, and not he, who provided the information concerning his medical conditions. (GD4-6) In a letter dated July 8, 2015, Dr. Segedi, described the Applicant as reporting continuous symptoms of anxiety and depression that were not relieved by his medications. Dr. Segedi described the Applicant as "looking depressed, helpless and hopeless." (GD4-7)

[16] The other medical evidence that was before the General Division related to the Applicant's heart conditions and bypass surgery and his other symptoms. As noted, the General

Division summarised the medical evidence. It also set out the testimonies of the Applicant and his wife.

[17] The General Division assessed the totality of the evidence for weight. It concluded that the evidence did not support a finding that the Applicant was disabled. The General Division considered the evidence of Dr. Surapaneni and Dr. Segedi. It found that these doctors were supportive of the Applicant. However, the General Division found that their reports also did not support a finding that the Applicant had a severe disability within the meaning of the CPP.

The General Division could have found that his overall condition was severe

[18] The Applicant's argument raises the issue of the cumulative effect of multiple conditions. Case law developed by the former Pension Appeals Board indicates that where there are multiple medical problems, an applicant's physical condition must be considered as a whole: *Taylor v. MHRD* (July 4, 1997), CP 4436. Decisions of the Pension Appeals Board are not binding on the Tribunal nonetheless; the Appeal Division is of the view that *Taylor* is highly persuasive.

[19] In the Appellant's case the General Division referred to and discussed not only the Applicant's mental health condition; it also discussed his cardiac condition and associated symptoms. With respect to his mental health condition the General Division found that the Applicant's treatment regime was conservative and appeared to be managed through medication and counselling. There were no periods of hospitalisation. The General Division also found that the evidence and testimony indicated his cardiac condition and related symptoms had stabilized. In light of its discussion of the Applicant's conditions, the Appeal Division finds that it cannot be said that the General Division disregarded or failed to consider the totality of the Applicant's symptoms. Thus, no error of law arises from the General Division's treatment of the Applicant's medical and mental health conditions.

The Applicant's employer modified his work significantly

[20] Applicants are required to find alternate employment: *Villani; Klabouch.* He claims that his employer modified his work significantly, however, this claim appears to conflict with his evidence that while the employer offered modified work, his doctor stated that he could not work. He has not looked for alternate employment. In the circumstances, the Appeal Division is not persuaded by the Applicant's submission.
Leave to appeal is not granted in this regard.

The Respondent made no submissions

[21] This submission is not supported as the Respondent, in fact, made written submissions in which it stated that the medical evidence did not support a that the Applicant's medical and mental health conditions rendered him incapable regularly of obtaining and maintain any substantial occupation. The submissions also made the case that the Applicant had not attempted to return to the workforce. (GD5) Accordingly, this is not a ground that would have a reasonable chance of success on appeal.

CONCLUSION

[22] On the basis of the foregoing, the Appeal Division finds that the Applicant's submissions and objections are at heart asking it to reweigh the evidence. *Tracey* makes clear that it is not the role of the Appeal Division to reweigh evidence so as to arrive at a conclusion more favourable to an applicant. The Appeal Division is not satisfied that the Applicant has raised grounds of appeal that would have a reasonable chance of success.

[23] The Application for Leave to Appeal is refused.

Hazelyn Ross
Member, Appeal Division