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

Citation: *M. A. v. Minister of Employment and Social Development*, 2016 SSTADIS 386

Tribunal File Number: AD-16-344

BETWEEN:

M. A.

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

DECISION BY: Janet Lew

DATE OF DECISION: ~~September 28, 2016~~
October 3, 2016

Revised decision: A corrigendum was issued on October 3, 2016; the correction has been made to the text and the corrigendum is appended to this decision.

Canada

REASONS AND DECISION

OVERVIEW

[1] The Applicant seeks leave to appeal the decision of the General Division dated December 16, 2015, which 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" on or before the end of his minimum qualifying period on December 31, 2014. The Applicant filed an application requesting leave to appeal on February 23, 2016, on the basis of several grounds of appeal. In response to a request for particulars from the Social Security Tribunal, the Applicant filed additional submissions on September 19, 2016.

ISSUE

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

SUBMISSIONS

[3] 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;
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> (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 I can consider granting leave, I need to be satisfied that the reasons for appeal fall within the permitted 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) Entitlement to a disability pension

[5] In the application requesting leave to appeal, the Applicant submits that he should be entitled to a Canada Pension Plan disability pension as he has contributed to the Canada Pension Plan. He also argues that the decision is unfair as he has a disability and therefore has been unable to work or operate his business since his accident occurred in 2010. He is feeling financial pressures too.

[6] Paragraph 44(1)(b) of the *Canada Pension Plan* stipulates the requirements which a claimant has to meet to qualify for a disability pension. The General Division set out these requirements at paragraph 3 of its decision. It is insufficient to have met the contributory requirements, as a claimant must also prove that he is disabled as defined by the *Canada Pension Plan.*

[7] In *Villani v. Canada (Attorney General)*, 2001 FCA 248, the Federal Court of Appeal held that:

> This restatement of the approach to the definition of disability does not mean that everyone with a health problem who has some difficulty finding and keeping a job is entitled to a disability pension. Claimants still must be able to demonstrate that they suffer from a "serious and prolonged disability" that renders them "incapable regularly of pursuing any substantially gainful occupation". Medical evidence will still be needed as will evidence of employment efforts and possibilities.

[8] For the most part, the Applicant seeks a reassessment on the issue of ~~whether an extension of time should be granted to file his appeal before the General Division~~ his entitlement to a Canada Pension Plan disability pension. As the Federal Court held in *Tracey*, it is not the role of the Appeal Division to reassess the evidence altogether. Rather, its role on an application for leave to appeal is to determine whether the General Division erred in law, made an erroneous finding of fact, or failed to observe a principle of natural justice, as set out under subsection 58(1) of the DESDA. There is no jurisdiction to intervene on the basis that the outcome is unfair to the Applicant, if the decision is otherwise unreviewable.

[9] The Federal Court of Appeal in *Miceli-Riggins v. Canada (Attorney General)*, 2013 FCA 158, examined the objectives of the *Canada Pension Plan.* The Court stated:

> [69] . . . The *Plan* is not supposed to meet everyone's needs. Instead, it is a contributory plan that provides partial earnings-replacement in certain technically-defined circumstances. It is designed to be supplemented by private pension plans, private savings, or both. See *Granovsky v. Canada (Minister of Employment and Immigration*), 2000 SCC 28 at paragraph 9, [2000] 1 S.C.R. 703.
>
> [70] Indeed, it cannot even be said that the *Plan* is intended to bestow benefits upon demographic groups of one sort or another. Instead, it is best regarded as a contributory-based compulsory insurance and pension scheme designed to provide some assistance – far from complete assistance – to those who satisfy the technical qualification criteria.
>
> [71] Like an insurance scheme, **benefits are payable on the basis of highly technical qualification criteria**…
>
> . . .
>
> [74] In the words of the Supreme Court,
>
> > The *Plan* was designed to provide social insurance for Canadians who experience a loss of earnings due to retirement, disability, or the death of a wage-earning spouse or parent. It is not a social welfare scheme. It is a contributory plan in which **Parliament has defined both the benefits and the terms of entitlement**, including the level and duration of an applicant's financial contribution.
> >
> > (*Granovsky*, *supra* at paragraph 9)
>
> (My emphasis)

[10] Disability benefits are not available to everyone who suffers from a disability. It is clear that an applicant must meet certain requirements in order to qualify for a disability pension under the *Canada Pension Plan*. The fact that the Applicant made valid contributions to the Canada Pension Plan is alone of no consequence, nor is the impact of the decision of the General Division on the Applicant, as there are highly technical requirements he had to meet to qualify for a disability pension. The General Division found

that the Applicant had not met those requirements. The *Canada Pension Plan* does not permit a General Division (or the Appeal Division for that matter) to consider the impact its decisions may have on any of the parties, nor does it confer any discretion upon the General Division to consider other factors outside of the *Canada Pension Plan* in deciding whether an applicant is disabled as defined by that Act.

[11] I am not satisfied that the appeal has a reasonable chance of success on this ground.

(b) Advice from Service Canada

[12] The Applicant also submits that Service Canada should have advised him to retain a lawyer, as he would have been able to present his case better from the outset.

[13] As set out above, the grounds of appeal under the DESDA are quite limited. This particular submission does not address any of the grounds of appeal set out under subsection 58(1) of the DESDA. In any event, the Applicant's letter of July 13, 2015 indicates that he would be seeking legal advice, so he cannot now suggest that he was unaware of his entitlement to be represented by legal counsel. I am not satisfied that this ground has a reasonable chance of success.

(c) Notices of assessment

[14] The Applicant claims that the General Division did not consider his notices of assessments, which represent, in part, his "self-employment records of employment". He attached copies of his 2015 Notice of Assessment, which shows that he had $6,500 of declared income for 2015. The hearing file before the General Division included copies of his income tax returns from 1995 to 2014 (GT8), notices of assessments for 2011 (GT1-16 to GT1-17), 2012 (GT1-48 to GT1-49) and 2014 (GT7-3 to GT7-5), and 2014 notice of reassessment (GT14-2 to GT14-5). However, it is clear that the General Division considered the income tax information. At paragraphs 6 and 7, the General Division noted that the Applicant had filed income tax returns for the years 2012 to 2014 and that he refiled his 2014 income tax return after July 2014, resulting in a change in the minimum qualifying period.

[15] The Applicant has not provided any other explanation as to why he has filed the notices of assessment for this leave application. If the Applicant relies on them to prove contributions to the Canada Pension Plan, as I have indicated above, contributions alone are insufficient to prove entitlement to a disability pension.

[16] If the Applicant relies on the income tax returns to show that he was severely disabled, any declared income on the notices of assessments however would not be conclusive evidence of severity, as they cannot be seen as a measure of a claimant's capacity regularly of pursuing any substantially gainful occupation. Similarly, particularly where self-employment earnings are concerned, they may not be illustrative that the Applicant's efforts to obtain and maintain employment may have been unsuccessful by reason of his health condition. Indeed, the Applicant acknowledged in his letter of July 18, 2015 that any earnings between 2010 and 2014, represented the sale of personal items, rather than employment earnings (GT11-1).

[17] It may be that any re-filed or subsequent income tax returns, such as the 2015 Notice of Assessment, may have the effect of changing the minimum qualifying period, but I am unable to consider any evidence which had not been before the General Division. As the Federal Court held in *Canada (Attorney General) v. O'Keefe*, 2016 FC 503 at para. 28, unlike its predecessor the Pension Appeals Board, an appeal to the Appeal Division does not allow for new evidence and is limited to the three grounds of appeal listed in section 58 of the DESDA.

[18] The Applicant suggests that the General Division did not consider the 2014 notice of reassessment, but the General Division specifically referred to it in paragraph 7, resulting in an amended minimum qualifying period.

[19] The Applicant suggests that the General Division should have considered his 2015 notice of assessment, but this document was issued after the hearing before the General Division – on August 29, 2016 (AD1A-2) - and therefore is of no relevance to this leave application.

[20] If the 2015 notice of assessment changes the minimum qualifying period, the Applicant could consider whatever options might be available to him, whether it be in filing a new application altogether, or other. However, he would still be required to produce evidence to prove that his disability is severe and prolonged on or before the end of the minimum qualifying period.

CONCLUSION

[21] Given the considerations above, the application for leave to appeal is dismissed.

Janet Lew
Member, Appeal Division

Corrigendum dated October 3, 2016

In the Reasons and Decision of the Appeal Division dated September 28, 2016, the following change has been made:

[1] On page 3, paragraph numbered 8, the words “whether an extension of time should be granted to file his appeal before the General Division” should be deleted and replaced with the following “his entitlement to a Canada Pension Plan disability pension”.