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

[TRANSLATION]

Citation: *L. R. v. Minister of Employment and Social Development*, 2016 SSTADIS 404

Tribunal File Number: AD-16-745

BETWEEN:

L. R.

Applicant

and

Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to appeal decision by: Shu-Tai Cheng

Date of decision: October 17, 2016

Canada

REASONS AND DECISION

INTRODUCTION

[1] On February 23, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal. The General Division determined that:

a) The Minimum Qualifying Period (MQP) ended on December 30, 2013, or the prorated possible date of May 31, 2014.

b) [translation] "[T]he evidence shows that the Appellant is able to work in a certain capacity, and there is no evidence to suggest that she was unable to obtain and maintain employment on account of her condition."

c) The Applicant [translation] "did not have a severe disability that has rendered her incapable of holding substantially gainful employment either before December 30, 2013, or before this date, or the possible date of May 31, 2014, calculated pro rata, which continues to this day".

File Background

[2] The Applicant filed an application for a disability pension in October 2011. The MQP ended on December 30, 2013, or the possible date of May 31, 2014, calculated pro rata.

[3] The Respondent denied the initial application and the request for consideration. The Applicant appealed the reconsideration decision before the Tribunal's General Division in June 2013.

[4] On February 23, 2016, the Tribunal's General Division rendered a decision on the record.

[5] The Applicant filed an incomplete application for leave to appeal (Application) with the Appeal Division on May 27, 2016.

[6] The Tribunal sent a letter dated June 22, 2016, to the Applicant requesting additional information to complete her Application. The Application did not explain the reasons for her appeal. The letter indicated a deadline of July 15, 2016, to provide the missing information.

[7] The Applicant called the Tribunal on July 18, 19, and 20, 2016, to say that she was going to submit the information needed to complete her Application.

[8] The Applicant sent the Tribunal an email on July 19, 2016, with attached images. On July 22, 2016, the Applicant attempted to send a document by fax. On July 22, 2016, she sent a 16-page document by fax. On July 26, 2016, she sent a series of emails to the Tribunal with documents in attachment; many of these documents could not be opened. A Tribunal employee called the Applicant on July 29, 2016, and an email was sent to the Applicant on August 2, 2016, to notify her that the Tribunal had not been able to properly receive her documents.

[9] On August 2, 2016, a Tribunal employee spoke to the Applicant on the phone and re-read the email from August 2, 2016, several times. The employee explained to the Applicant that she must respond to the requests made in the letter of June 22, 2016, and that she cannot simply send images. He also suggested to the Applicant that she has someone assist her so that she can properly respond to this letter.

[10] Since then, nothing more was received from the Applicant.

[11] In her Application and written submissions, the Applicant notes that:

(a) She is unable to work because of [translation] "physical reasons and disability";

(b) Her health has not improved since 2000—it has, in fact, gotten worse;

(c) The General Division's decision [translation] "is unfair...because...illness/long-term and incurable condition...cannot exert herself...zero quality of life"; and

(d) She provided documents from 2016.

ISSUE

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

THE LAW AND ANALYSIS

[13] As stated in subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), "[a]n 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."

[14] 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."

[15] 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.

[16] The Tribunal grants leave to appeal if it is satisfied that the Applicant demonstrates that one of the aforementioned grounds of appeal has a reasonable chance of success.

[17] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESD Act, whether there is a question of law, fact or jurisdiction, or relating to a principle of natural justice, the response to which might justify setting aside the decision under review.

[18] The Applicant does not refer to subsection 58(1) of the Act to state her grounds of appeal. Based on her reasons for appeal, she seems to suggest that 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.

[19] It is not up to the Appeal Division member who has to determine whether to grant leave to appeal to reweigh and reassess the evidence submitted before the General Division. Based on my reading of the file and the General Division's decision, the reasons that the Applicant has brought up in her Application and additional documents (summarized in paragraph [11] above)—that she has a severe disability—have already been brought forth before the General Division.

[20] Mere repetition of the arguments already made before the General Division is not sufficient to show that one of the above grounds of appeal has a reasonable chance of success.

[21] An appeal to the Appel Division is not a hearing on the merits of the applicant's disability claim.

[22] The documents dated 2016 are after the Applicant's MQP and were not submitted to the General Division. These documents were submitted to the Appeal Division to support the Applicant's argument that she has a severe disability; however, they are not relevant to the question of whether the Applicant actually had a severe and prolonged disability on or before the end of the MQP.

[23] The General Division decision reviewed the evidence on file. Specifically, it noted that:

a) The Applicant began showing symptoms in 2000;

b) She was diagnosed with fibromyalgia in 2005 and conservative treatments were prescribed;

c) She continued to work, both in a home-based business and outside the home, up until May 2013;

d) Medical reports from her family doctor and specialists were considered;

e) The Applicant submitted a functional abilities assessment in 2014 and the assessment report was reviewed; and

f) There was medical evidence from after the MQP that was not reviewed.

[24] I find that the General Division did not base 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.

[25] Moreover, the General Division decision in this case cited and applied *Villani v. Canada (A.G.)*, 2001 FCA 248; *Inclima v. Canada (A.G.)*, 2003 FCA 117; and *Canada (MHRD) v. Rice*, 2002 FCA 47—Federal Court of Appeal decisions that are binding on the General Division.

[26] The General Division decision refers to sections of the *Canada Pension Plan* and to jurisprudence relevant to a reconsideration request. The General Division applied the law to the Applicant's situation. The decision does not contain an error in law.

[27] The appeal has no reasonable chance of success.

CONCLUSION

[28] The application for leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division