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

Citation: *B. R. v. Minister of Employment and Social Development*, 2016 SSTADIS 410

Tribunal File Number: AD-16-822

BETWEEN:

**B. R.**

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: October 19, 2016

## REASONS AND DECISION

## INTRODUCTION

[1] On March 14, 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 to the Applicant.

[2] The Applicant filed a handwritten letter, which was treated as an application for leave to appeal (Application), with the Appeal Division (AD) of the Tribunal on June 17, 2016.

[3] In July 2016, the Applicant filed documents dated in 2015 and 2016, as well as portions of some documents that were in the file before the GD.

[4] On July 18, 2016, the Tribunal asked the Respondent for submissions on whether leave should be granted or refused, and the letter noted, in particular, that the Applicant wishes to present further medical evidence.

[5] The Respondent filed written submissions on July 25, 2016.

## ISSUE

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

## THE LAW

[7] 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 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."

[8] 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."

[9] 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."

[10] 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**

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

a) he wants to obtain more medical information to submit to the Tribunal;

b) he disagrees with some of the findings of fact in the GD decision; and

c) he restates his background and medical information from his point of view.

[12] The Respondent's written submissions can be summarized as follows:

a) an appeal before the AD is not a hearing *de novo*; it is not an opportunity for a new trial;

b) adducing new evidence is no longer a ground of appeal on CPP matters before the AD, and it would be an error to consider it as such; and

c) the Applicant has not identified any grounds of appeal under section 58 of the DESD Act.

**ANALYSIS**

[13] The Applicant applied for a disability pension in November 2013. The Respondent denied the application initially and upon reconsideration, on the basis that while the Applicant had certain restrictions due to his medical condition, he remained capable of performing lighter work suitable to his condition.

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

[15] The GD decided to proceed by way of a teleconference hearing. The Applicant was present at the hearing. The Respondent was not present, but had filed written submissions prior to the hearing.

[16] The issue before the GD was whether the Applicant had a severe and prolonged disability on or before December 31, 1997, which was his minimum qualifying period (MQP).

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

[18] The Application and documents submitted by the Applicant to the AD argue that he is disabled and there is evidence showing his medical condition. He appears to have filed new documents that were not before the GD, dated in 2015 and 2016.

[19] 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 6. The Applicant's submissions before the GD were summarized on page 6 and discussed at pages 7 to 9; they included many of the points in support of the Application and noted in paragraph [11] above.

[20] The GD stated the correct legislative basis and legal tests. It found that the Applicant had capacity to work at a substantially gainful occupation and was not satisfied that the Applicant suffered from a severe disability in accordance with the CPP criteria.

[21] The Application stated that the Applicant would be getting a full medical report on June 30, 2016. A letter dated June 30, 2016, from the "Centre Médical Seine" was filed by the Applicant in July 2016. It lists the Applicant's "active medical problems … and current medications". Other documents filed with this letter include a 2015 medical referral and CT report therefrom, and portions of some documents that were already in the appeal file.

[22] Nothing else has been received from the Applicant.

[23] For the most part, the Application repeats the Applicant's evidence and submissions before the GD.

[24] The Applicant also seeks to introduce documents (or portions of documents) dated in 2015 and 2016. These are all well after the MQP, and relate to his medical issues and medications in 2015 and 2016. His MQP was December 31, 1997.

[25] New evidence is not a ground of appeal under section 58 of the DESD Act. Moreover, documents which relate to the Applicant's medical issues and medications, more than 17 years after his MQP, would not be relevant to whether he had a severe and prolonged disability on or before December 31, 1997.

[26] 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.

[27] 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.

[28] 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**

[29] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division