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

[TRANSLATION]

Citation: *F. C. v. Minister of Employment and Social Development*, 2016 SSTADIS 431

Tribunal File Number: AD-16-623

BETWEEN:

F. C.

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: Shu-Tai Cheng

Date of Decision: November 2, 2016

REASONS AND DECISION

INTRODUCTION

[1] On January 29, 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 31, 1997.

b) [translation] "[D]ue to a lack of medical evidence surrounding her MQP and the fact that the Appellant had worked for three years after her MQP, the Tribunal finds that the Appellant did not have a severe disability that renders her regularly incapable of pursuing any gainful occupation on or before December 31, 1997, and 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 31, 1997.

[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 August 2013.

[4] On January 29, 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 April 27, 2016.

[6] The Tribunal sent a letter dated May 5, 2016, to the Applicant requesting additional information to complete her Application. The Application did not explain the reasons for her appeal. The letter informed the Applicant that she had until June 6, 2016, to provide the missing information.

[7] The Applicant sent a letter that was received by the Tribunal on May 30, 2016, at which point her Application was considered complete.

ISSUE

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

THE LAW AND ANALYSIS

[9] 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."

[10] 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."

[11] 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.

[12] 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.

[13] 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.

[14] The Applicant does not refer to subsection 58(1) of the DESD Act to state her grounds of appeal. Based on her reasons for appeal, she states that the General Division failed to observe a principle of natural justice because she believes that she is entitled to her benefits. Specifically, the Applicant notes that:

(a) her physical state has been in gradual decline since 1998;

(b) she cared for her mother from 2001 to 2008, and during this time, her own health deteriorated;

(c) she did her job at Energy Gym for three years, from 2009 to 2011 with the help of her son; and

(d) she now has severe osteoarthritis and is not capable of working.

[15] 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—that she has a severe disability—have already been brought forth before the General Division.

[16] 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.

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

[18] The General Division had to determine whether it was likely that the Applicant had a severe and prolonged disability on or before December 31, 1997.

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

a. The medical evidence is dated after the Applicant's MQP;

b. The evidence on file shows that the Applicant is currently unfit to work;

c. The General Division must nonetheless determine whether she was able to work on or before her MQP of December 31, 1997;

d. The evidence does not support the conclusion that she was unfit to work on or before that date; and

e. There is no medical evidence around the MQP that suggests that she was unfit to work and she worked for three to years beyond her MQP.

[20] For these reasons, the General Division found that the Applicant did not have a severe disability that has rendered her incapable of holding substantially gainful employment either on or before December 31, 1997, which continues to this day.

[21] 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.

[22] 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.

[23] 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.

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

CONCLUSION

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

Shu-Tai Cheng
Member, Appeal Division