



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. P. v. Minister of Employment and Social Development*, 2016 SSTADIS 495

Tribunal File Number: AD-16-1300

BETWEEN:

J. P.

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: Janet Lew

Date of Decision: December 21, 2016

REASONS AND DECISION

[1] The Applicant seeks leave to appeal the decision of the General Division dated April 4, 2016, which determined that the Applicant had ceased to be eligible for a disability pension within the meaning of the *Canada Pension Plan*, on March 1, 2008. The Applicant filed an application requesting leave to appeal on November 21, 2016.

ISSUES

[2] The two issues before me are as follows:

- (1) is the application requesting leave to appeal late? If so, should I exercise my discretion and extend the time for filing the leave application, and
- (2) does the appeal have a reasonable chance of success?

FACTUAL BACKGROUND

[3] The relevant facts for the purposes of this application are as follows:

- The Applicant indicates that he received the decision of the General Division on April 4, 2016.
- The Applicant filed an application requesting leave to appeal on November 21, 2016. His counsel's covering letter states that he was re-filing the application, as he had learned that the Social Security Tribunal did not already have a copy of the application, which he had previously filed on June 30, 2016. His application included a confirmation sheet indicating that the Applicant had indeed filed an application on June 30, 2016.

ANALYSIS

(a) Late application

[4] I am satisfied by the facsimile confirmation sheet that the Applicant had filed an application requesting leave to appeal within 90 days after the day on which the decision of

the General Division had been communicated to him, and that he therefore complied with the requirements under the *Department of Employment and Social Development Act* (DESDA) and the *Social Security Tribunal Regulations*.

(b) Application requesting leave to appeal

[5] Subsection 58(1) of the 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;
- (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.

[6] Before granting leave, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[7] Recently, the Federal Court of Appeal in *Mette v. Canada (Attorney General)*, 2016 FCA 276 indicated that it is unnecessary for the Appeal Division to address all of the grounds of appeal raised by an applicant. In response to the Respondent's arguments that the Appeal Division was required to deny leave on any ground it found to be without merit, Dawson J.A. stated that subsection 58(2) of the DESDA "does not require that individual grounds of appeal be dismissed ... individual grounds may be so inter-related that it is impracticable to parse the grounds so that an arguable ground of appeal may suffice to justify granting leave". This is one of those occasions before me.

[8] The Applicant submits that the General Division failed to consider *Villani v. Canada (Attorney General)*, 2001 FCA 248, and consider whether the Applicant's medical

condition, limitations and the nature of his involvement in the business, viewed in a real world context, rendered him incapable of regularly pursuing substantially gainful employment. The Applicant correctly notes that the General Division did not cite *Villani* nor refer to the legal principles enunciated by the Federal Court of Appeal. On this basis alone, I am satisfied that the appeal has a reasonable chance of success.

[9] The Applicant has cited other grounds, which may be inter-related to the ground on which I am prepared to grant leave to appeal. For the reasons which I have set out above, it is unnecessary for me to address each of them.

CONCLUSION

[10] The application for leave to appeal is allowed.

[11] This decision granting leave to appeal does not, in any way, prejudice the result of the appeal on the merits of the case.

Janet Lew
Member, Appeal Division