



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. A. v. Minister of Employment and Social Development*, 2016 SSTADIS 496

Tribunal File Number: AD-16-1305

BETWEEN:

**M. A.**

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: Janet Lew

Date of Decision: December 21, 2016

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated August 23, 2016, which determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that her disability was not “severe” by the end of her minimum qualifying period on December 31, 2012. The Applicant filed an application requesting leave to appeal on November 23, 2016, invoking several grounds of appeal.

### ISSUE

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

### ANALYSIS

[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;
- (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 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.

[5] 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".

[6] The Applicant submits, amongst other things, that although the General Division noted her age and work experience at paragraph 10, it otherwise failed to cite *Villani v. Canada (Attorney General)*, 2001 FCA 248, or conduct its analysis in accordance with its principles. I agree that the General Division does not appear to have referenced or considered *Villani* in assessing the severity of the Applicant's disability. On this basis alone, I am satisfied that the appeal has a reasonable chance of success.

[7] The Applicant has cited other grounds, which may be inter-related to the ground on which I am prepared to grant leave to appeal. The Applicant further submits that the General Division failed to explain why it discounted key medical evidence, and also failed to consider the reasonableness of her choices with respect to medical treatment. For the reasons which I have set out above, it is unnecessary for me to address each of them.

## **CONCLUSION**

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

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

Janet Lew  
Member, Appeal Division