



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. A. v. Minister of Employment and Social Development*, 2017 SSTADIS 2

Tribunal File Number: AD-16-311

BETWEEN:

**S. 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: January 4, 2017

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Applicant seeks leave to appeal the decision of the General Division dated December 21, 2015, 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, 2010. The Applicant filed an application requesting leave to appeal on February 18, 2016, invoking several grounds of appeal.

### **ISSUES**

[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". This is one of those occasions before me.

[6] The Applicant raises several grounds of appeal. The Applicant submits that the General Division erred in law and 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.

[7] The Applicant submits, for instance, that the General Division failed to apply *Bungay v. Canada (Attorney General)*, 2011 FCA 47, in not considering the totality of her impairments. In particular, the Applicant submits that the General Division did not consider "the impact of [her] severe chronic pain, fibromyalgia ... headaches, back pain, shoulder pain and anxiety about experiencing seizures outside the home, in addition to the side effects of her medication on her ability to sustain regular substantially employment".

[8] In the summary of the evidence, the General Division noted that the Applicant has been treated for fibromyalgia, post-traumatic stress disorder and chronic pain syndrome, amongst other things. The General Division also noted that the Applicant has less intense pain now that she has been using a pain patch and taking Tylenol 3, and that she does not feel depressed, as long as she does not have to return to her workplace. In its analysis, the General Division addressed the Applicant's pain, migraine headaches, stress, anxiety and depression, although did not specifically address the fibromyalgia or chronic pain syndrome. A cursory review of the hearing file before the General Division indicates that there was evidence indicating that the Applicant had been seen by her family physician in connection with fibromyalgia and a chronic pain syndrome. On this basis, I am satisfied that the General Division may not have considered the totality of the medical evidence in its analysis.

[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, prejudge the result of the appeal on the merits of the case.

Janet Lew  
Member, Appeal Division