



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

[TRANSLATION]

Citation: *D. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 55

Tribunal File Number: AD-16-141

BETWEEN:

D. B.

Applicant

and

**Minister of Employment and Social Development
(formerly 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: February 22, 2017

REASONS AND DECISION

INTRODUCTION

[1] On October 15, 2015, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal.

[2] The Applicant had filed an application for a *Canada Pension Plan* (CPP) disability pension in May 2012. The Respondent denied the initial application, as well as the request for reconsideration. The Appellant appealed the reconsideration decision to the Tribunal.

[3] The General Division determined that:

- a) the Appellant had begun receiving a CPP retirement pension in April 2011;
- b) the minimum qualifying period (MQP) had ended on March 31, 2011, the month before the Appellant began receiving his retirement pension;
- c) the Appellant returned to work in July 2011 at his old job and did not try lighter work that could have been more suited to his limitations;
- d) the evidence does not clearly show that the Appellant's conditions had made him incapable of working on or before March 31, 2011; and
- e) the Appellant did not have a disability rendering him incapable regularly of pursuing any substantially gainful occupation during the MQP.

[4] The Applicant filed an application for leave to appeal (Application) the decision of the General Division before the Appeal Division of the Tribunal on January 11, 2016.

[5] On June 21, 2016, the Appeal Division asked the Applicant to answer some questions, specifically:

[translation]

1 – What are the significant errors regarding the facts in the file? In the application, it is stated that an error was committed. You must explain what each alleged error consisted of;

2 – What are the errors in the application of the law to the facts? It is insufficient to state that “the nature of seriousness has not been assessed in a realistic context”;

3 – What principle of natural justice did the General Division fail to observe? The leave to appeal application in no way specifies the principle at issue; and

4 – It is insufficient to indicate that “The Appellant will establish the grounds of an appeal in a factum that will follow this request.” Please cite the specific pages in the file documents or the paragraphs of the General Division’s decision for each ground and reason for appeal.

[6] The Applicant’s representative informed the Tribunal that the Appellant had passed away on June 24, 2016. On July 5, 2016, the representative sent an email to the Tribunal asking for a two-month extension to answer the questions. This email notes that [translation] “those details and grounds of the appeal will be provided to you in an appeal document submitted to the Tribunal.”

[7] The Tribunal granted the request for extension.

[8] On November 1, 2016, the representative for the Applicant’s estate advised that the Applicant’s estate did not have the resources or the time to continue the appeal, and the representative asked the Tribunal to render a decision based on the information in the file.

[9] The Tribunal asked the Respondent for written submissions and the Respondent filed them. These submissions note that the Appellant did not substantiate any of the grounds of appeal as provided for in section 58 of the *Department of Employment and Social Development Act* (Act).

ISSUES

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

LAW AND ANALYSIS

[11] Subsections 56(1) and 58(3) of the Act provide that “[a]n appeal to the Appeal Division may only be brought if leave to appeal is granted” and that the Appeal Division “must either grant or refuse leave to appeal.”

[12] Subsection 58(2) of the Act provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success”.

[13] According to subsection 58(1) of the Act, the only grounds of appeal are:

- (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.

[14] The Tribunal grants leave to appeal if it is satisfied that the Applicant has demonstrated that there is at least one of the aforementioned grounds of appeal and if it is satisfied that at least one of the grounds has a reasonable chance of success.

[15] In other words, the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the Act, whether there is a question of law, fact or jurisdiction, or a question relating to a principle of natural justice, the response to which may justify setting aside the decision under review.

[16] The Applicant cites subsection 58(1) of the Act, but the Application does not specify the errors (of natural justice, law or fact) that he is alleging. Furthermore, the Applicant did not answer the Tribunal’s questions with respect to the details and the grounds of the appeal.

[17] It is not incumbent upon the member of the Appeal Division, which must determine whether leave to appeal should be granted, to reassess the evidence submitted before the General Division.

[18] Mere repetition of the argument already made before the General Division – that a disability pension must be payable to the appellant – is insufficient for showing that one of the above grounds of appeal has a reasonable chance of success. It is also insufficient to allege, without specifying the details, that the General Division committed errors stated in subsection 58(1) of the Act.

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

[20] Because the Applicant is not raising any of the grounds of appeal set out in subsection 58(1) of the Act, the appeal has no reasonable chance of success.

CONCLUSION

[21] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division