



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. F. v. Minister of Employment and Social Development*, 2017 SSTADIS 69

Tribunal File Number: AD-16-1397

BETWEEN:

A. F.

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: February 27, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated March 4, 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” on or before March 2013, the month before she began receiving a Canada Pension Plan retirement pension.

ISSUE

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

GROUND OF APPEAL

[3] Subsection 58(1) of the *Department of Employment and Social Development (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] The Applicant submits that her language deficiencies could have led to an inaccurate understanding of the facts and that this therefore resulted in erroneous findings of fact. However, the Applicant did not identify the alleged erroneous findings of fact.

[6] On January 5, 2017, the Social Security Tribunal wrote to the Applicant, requesting that she identify or highlight the sentences where the General Division is alleged to have made erroneous findings of fact. The Tribunal also asked the Applicant to identify the evidence upon which she relied to show that the General Division made erroneous findings of fact, whether in the documentary record or in the recording of the hearing. The Tribunal requested that she provide a response by no later than Friday, February 10, 2017, but no response was received.

[7] Although the Applicant alleges that the General Division based its decision on erroneous findings of fact in a perverse or capricious manner or without regard to the material before it, she has not provided any particulars in this regard.

[8] Although the Applicant has not identified a reviewable error under subsection 58(1) of the DESDA, I will examine the medical evidence and compare it to the decision of the General Division. After all, the Federal Court has cautioned the Tribunal against mechanically applying the language of section 58 of the DESDA when it performs its gatekeeping function: *Karadeolian v. Canada (Attorney General)*, 2016 FC 615 at para. 10. The Federal Court wrote, “If important evidence has been arguably overlooked or possibly misconstrued, leave to appeal should ordinarily be granted notwithstanding the presence of technical deficiencies in the application for leave.”

[9] I have reviewed the evidence that was before the General Division. The Applicant was diagnosed with several medical conditions in 2012, including bladder cancer, depression and anxiety, osteoporosis, osteoarthritis, hyperthyroidism, dyslipidemia and gastroesophageal reflux disease (GERD). There was little or no supporting evidence of the impact of these, other than the bladder cancer, depression and anxiety. At the same time, the Applicant underwent resection of her bladder cancer on April 12, 2012, yet there were no updated medical records after this date to address the Applicant’s response to the procedure, other than the Medical Certificate dated July 16, 2012 (see page GT6-4 / AD1-9 of the

hearing file), in which her family physician indicated that the Applicant was unable to return to work until further notice. There were no medical records that were prepared closer to March 2013. My review of the hearing file does not indicate that the General Division either overlooked or possibly misconstrued important evidence.

[10] Unless there is a possible identifiable reviewable error under subsection 58(1) of the DESDA, decisions of the General Division are entitled to significant deference: *Hussein v. Canada (Attorney General)*, 2016 FC 1417.

CONCLUSION

[11] For the reasons that I have set out, I am not satisfied that the appeal has a reasonable chance of success. The application for leave to appeal is dismissed.

Janet Lew
Member, Appeal Division