



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. J. M.*, 2017 SSTADIS 102

Tribunal File Number: AD-16-950

BETWEEN:

**Minister of Employment and Social Development
(formerly known as the Minister of Human Resources and Skills
Development)**

Applicant

and

J. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: March 14, 2017

REASONS AND DECISION

INTRODUCTION

[1] On April 18, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) allowed the Respondent's appeal of a decision of the Minister of Employment and Social Development (Applicant). The Respondent had been denied benefits on a claim for a disability pension under the *Canada Pension Plan* (CPP). The Applicant appealed to the General Division of the Tribunal.

[2] The General Division held an in-person hearing, and it determined that:

- a) The minimum qualifying period (MQP) was December 31, 2010;
- b) The Respondent had a severe and prolonged disability as of October 2013; and
- c) Payments of CPP disability benefits would start as of February 2014.

[3] Based on these conclusions, the General Division allowed the appeal.

[4] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on June 18, 2016, within the 90 day appeal period.

ISSUE

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

LAW AND ANALYSIS

[6] Pursuant to paragraph 57(1)(b) of the *Department of Employment and Social Development Act* (DESD Act), an application must be made to the Appeal Division within 90 days after the day on which the decision appealed from was communicated to the appellant.

[7] According to subsections 56(1) and 58(3) of the DESD Act, "an appeal to the Appeal Division may only be brought if leave to appeal is granted" and "the Appeal Division must either grant or refuse leave to appeal."

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

[9] Subsection 58(1) of the DESD Act states that the only grounds of appeal are 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.

[10] The Applicant’s grounds of appeal are that the General Division erred in law in arriving at its decision. The Applicant’s arguments can be summarized as follows:

a) The General Division erred when it determined that the Respondent became disabled in October 2013;

b) The end of his MQP was December 31, 2010; and

c) The awarding of CPP disability benefits post-MQP is an error of law, on the face of the decision.

[11] As regards the MQP issue, the General Division stated, at paragraph [7] of its decision, that “There was no issue regarding the MQP because the parties agree and the Tribunal finds that the MQP date is December 31, 2010.”

[12] However, after analysis of the evidence and the submissions of the parties, the General Division concluded, at paragraph [73], that the Respondent “had a severe and prolonged disability in October 2013...”

[13] Although the General Division noted at paragraph [5] of its decision that “a person must establish a severe and prolonged disability on or before the end of the MQP”, its decision finds

the Respondent had a severe and prolonged disability more than two years after the end of the MQP.

[14] Possible errors in the General Division decision include:

- a) The date of the MQP;
- b) Whether the Respondent had a severe and prolonged disability on or before the MQP;
and
- c) The date that payments of CPP disability benefits would start.

[15] Under the circumstances, whether the General Division erred in law in making its decision warrants further review.

[16] On the grounds that there may be an error of law, I am satisfied that the appeal has a reasonable chance of success.

CONCLUSION

[17] The Application is granted under paragraph 58(1)(b) of the DESD Act.

[18] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[19] I invite the parties to make written submissions on whether a hearing is appropriate and, if it is, on the form of the hearing and, also, on the merits of the appeal.

Shu-Tai Cheng
Member, Appeal Division