Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

[TRANSLATION]

Citation: *J. T. v. Minister of Employment and Social Development*, 2017 SSTADIS 121

Tribunal File Number: AD-16-953

BETWEEN:

J. T.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: March 27, 2017

REASONS AND DECISION

INTRODUCTION

[1] On April 14, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal. The General Division had determined the following:

a) The minimum qualifying period (MQP) had ended on December 31, 2014;

b) The Applicant [translation] "would have transferrable skills that he could apply to another more suitable job," but he "did not attempt to look for another job that was better suited to his limitations";

c) The Applicant did not have [translation] "a severe disability that rendered him incapable regularly of pursuing any substantially gainful occupation on or before December 31, 2014, and that continues to this day."

File Background

[2] The Applicant applied for a disability pension in May 2013. The MQP ended on December 31, 2014.

[3] The Respondent denied his application initially and on reconsideration, and the Applicant appealed the reconsideration decision before the General Division of the Tribunal in September 2013.

[4] On April 14, 2016, the General Division of the Tribunal rendered a decision on the record.

[5] The Applicant filed an application for leave to appeal (application) before the Appeal Division on July 19, 2016.

ISSUE

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

LAW AND ANALYSIS

[7] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESDA), “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 DESDA provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[9] According to subsection 58(1) of the DESDA, 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 Tribunal will grant leave to appeal if it is satisfied that the Applicant has demonstrated that at least one of the aforementioned grounds of appeal has a reasonable chance of success.

[11] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESDA, whether there is a question of law, fact or jurisdiction, or a question relating to a principle of natural justice, the response to which might justify setting aside the decision under review.

[12] The Applicant makes no reference to paragraph 58(1)(*c*) of the DESDA in specifying his grounds for appeal. According to his reasons for appeal, the Applicant asserts that 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.

[13] Specifically, the Applicant notes that Dr. Faucher's letter, dated July 11, 2016, was not taken into consideration. The Applicant claims that it contains "new facts." The Applicant also argues that he attempted to look for another job, but that he did not submit any evidence of this because a Service Canada employee told him that it was unnecessary. Regarding his personal factors, the Applicant argues that it is unrealistic for him to go back to school, and that while he understands a little English, he does not speak it.

[14] It is not incumbent on the member of the Appeal Division, who must determine whether leave to appeal should be granted, to reassess the evidence submitted before the General Division. From my reading of the appeal file and the General Division decision, most of the reasons that the Applicant has raised in his application were already advanced before the General Division.

[15] Mere repetition of the arguments already made before the General Division is not sufficient to show that the appeal has a reasonable chance of success on one of the aforementioned grounds of appeal.

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

[17] The General Division had to determine whether it was likely that the Applicant had a severe and prolonged disability on or before December 31, 2014.

[18] In his decision, the General Division member mentions his review of the evidentiary record, specifically:

a) The opinion of Dr. Faucher (at paragraphs 11 and 16);

b) The medical reports on file (at paragraphs 9 to 12 and 16);

c) That Drs. Faucher and Éfoé were of the opinion that the Applicant is unable to return to his previous job;

d) That the Tribunal must determine whether the Applicant is able to work in any type of job, not just whether he can return to his previous job;

e) That the Applicant [translation] “did not attempt to be retrained for another position” and that he “would have transferrable skills that he could apply to another more suitable job.”

[19] For these reasons, the General Division found that the Applicant did not have a severe disability that has rendered him regularly incapable of holding substantially gainful employment either on or before December 31, 2014, and that continues to this day.

[20] Regarding the errors alleged by the Applicant, I note the following:

a) The General Division examined the documents relevant to the file;

b) The General Division decision refers to the medical reports of his family doctor and specialists;

c) Dr. Faucher's letter of July 11, 2016, was produced after the General Division’s decision of April 14, 2016;

d) There was no evidence on file to support the fact that the Applicant had attempted to find another position or had attempted to find a job that was better suited to his limitations.

[21] It was not an error on the part of the General Division to not have considered a document that did not exist at the time of its decision. In his application, the Applicant admits that there is no evidence on file to support the fact that he attempted to find work. Consequently, the General Division’s conclusion that there was no evidence of this on file is not erroneous.

[22] I conclude that the General Division did not base 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.

[23] Furthermore, in the General Division’s decision, the member cited *Villani v. Canada (Attorney General)*, 2001 FCA 248; *Inclima v. Canada (Attorney General)*, 2003 FCA 117; and *Canada (Minister of Human Resources Development) v. Rice*, 2002 FCA 47, among the Federal Court of Appeal decisions that the General Division is bound to.

[24] The General Division decision refers to the sections of the *Canada Pension Plan* and to the jurisprudence relevant to a request for reconsideration. The General Division applied the law to the Applicant's situation. The decision does not contain an error in law.

[25] For these reasons, the appeal has no reasonable chance of success.

[26] The Applicant wishes to submit additional documents in support of his application for disability benefits (e.g. Dr. Faucher's letter of July 11, 2016, and evidence in support of his job search). If the Applicant is asking us to consider these additional documents, reassess the evidence, and reassess the application in his favour, I am unable to do so at this stage, given the constraints under subsection 58(1) of the DESDA. Neither the application nor the appeal provides any opportunities to re-hear the merits of the case.

[27] If the Applicant intended to file additional documents to have the General Division's decision rescinded or amended, he would have been obligated to comply with the requirements set out in sections 45 and 46 of the *Social Security Tribunal Regulations* and to file an application to rescind or amend with the General Division. In this case, the Appeal Division has no jurisdiction to rescind or amend a decision based on new facts, as it is only the division that made the decision that is empowered to do so—in this case the General Division. Subsection 66(2) of the DESDA requires that an application to rescind or amend a decision be made within one year after the day on which a decision is communicated to the parties. The General Division decision is dated April 14, 2016. Therefore, the Applicant has one year following the communication of that decision to request that the General Division rescind or amend it. That period is almost up. If the Applicant wishes to file such an application with the General Division, he will have to do so quickly.

CONCLUSION

[28] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division