



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Y. M. v. Minister of Employment and Social Development*, 2017 SSTADIS 113

Tribunal File Number: AD-17-83

BETWEEN:

Y. M.

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: March 21, 2017

REASONS AND DECISION

OVERVIEW

[1] This case is about whether the General Division erred in determining the date of onset of disability for the Applicant. The General Division determined that the Applicant had a severe and prolonged disability by March 2016, when a psychiatrist opined that her chronic pain and depression were functionally debilitating. The Applicant seeks leave to appeal the decision of the General Division, arguing that she should be found disabled as of March 2015, when she stopped working.

ISSUE

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

ANALYSIS

[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 suggests that the General Division may have made a typographical error in writing March 2016 instead of March 2015 as the date of onset of disability. Had the General Division provided the date in isolation without reference to any incident or documentary record, I might have been prepared to consider this submission, but the General Division explained how it determined the date of onset to be March 2016. The member specifically referred to the psychiatrist's opinion of March 2016 as the basis upon which he determined the date of onset of disability.

[6] The Applicant submits that there were several medical opinions that addressed the issue of the severity of the Applicant's disability, including a report dated January 26, 2015 of a vocational rehabilitation consultant (at pages GD2-16 to 30). The Applicant suggests that the report of the vocational rehabilitation consultation should be preferred over that of the psychiatrist. Indeed, the Applicant notes that the General Division "accord[ed] significant weight" to the opinion of the vocational rehabilitation consultant. However, there is nothing in the vocational rehabilitation consultant's report that establishes a date of onset of disability of March 2015.

[7] The General Division also indicated that it accorded significant weight to the opinions of the psychiatrist and the family physician. The family physician prepared a report dated October 26, 2015 (GD2-107 to 110), as well as an undated medical report (at GD2-72 to 73). Hence, the fact that the General Division indicated that it placed significant weight on the opinion of the vocational rehabilitation consultation should not be definitive of the date of onset of disability, given that the General Division also accorded significant weight to the opinions of other health caregivers.

[8] Nonetheless, I am satisfied that the appeal has a reasonable chance of success, as the General Division may have erred if it did not articulate why the date of the psychiatrist's report was chosen as the date of onset of disability, rather than another date, such as when the Applicant stopped working or when her family physician prepared a report in October 2015. If there were circumstances or records that suggested that the Applicant was not disabled by March 2015, when she stopped working, and that her disability progressed and

deteriorated such that she became disabled only in March 2016, those may have been matters that the General Division ought to have addressed.

CONCLUSION

[9] The application for leave to appeal is allowed. 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