



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. K. v. Minister of Employment and Social Development*, 2017 SSTADIS 138

Tribunal File Number: AD-16-882

BETWEEN:

M. K.

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: April 3, 2017

REASONS AND DECISION

INTRODUCTION

[1] On June 7, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* (CPP) was not payable to the Applicant.

[2] The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on June 22, 2016.

[3] The Application was filed within the time limit for appeal to the Appeal Division.

ISSUE

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

THE LAW

[5] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division within 90 days after the day on which the decision appealed from was communicated to the appellant. Moreover, “the Appeal Division may allow further time within which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant.”

[6] 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.”

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

[8] 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.

SUBMISSIONS

[9] The Applicant's reasons for appeal can be summarized as follows:

- a) There is a "confusing point" in her file regarding the date on which she is claiming she became disabled. It is January 2014, not December 2004.
- b) She had a medical condition in 2004; however, she did return to work several times.
- c) She relies on her degenerative disk disease, which causes severe pain and is never going to improve.
- d) She asks for an expedited decision because of her financial situation.

ANALYSIS

[10] The Applicant first applied for a disability pension in 2004, but that application was denied by the Respondent.

[11] The Applicant applied a second time for a disability pension in March 2014. The Respondent denied the application initially and upon reconsideration, on the basis that, although the Applicant had enough contributions to the CPP to qualify until December 2004, she did not have a severe and prolonged disability on or before December 31, 2004.

[12] The Applicant requested reconsideration of this decision, and the Respondent maintained its initial decision.

[13] The Applicant appealed that decision to the General Division of the Tribunal.

[14] The General Division decided to proceed by way of a teleconference hearing. The Applicant was present and testified at the hearing; she was also represented. The Respondent was not present, but had filed written submissions prior to the hearing.

[15] The issue before the General Division was whether the Applicant had a severe and prolonged disability on or before December 31, 2004, which was the end of her minimum qualifying period (MQP).

[16] The General Division reviewed the Applicant's evidence (testimonial and documentary) and the submissions of the parties. It rendered a written decision that is understandable, sufficiently detailed and logically coherent. The General Division weighed the evidence and gave reasons for its analysis of the evidence and the law. These are the proper roles of the General Division.

[17] The Applicant argues that she is claiming disability from January 2014 and not 2004. On January 14, 2014, she "quit work permanently." She asserts that the General Division was confused on this point.

[18] It is clear from the Respondent's reconsideration decision and the General Division's decision that the Applicant last met the contributory requirements under the CPP on December 31, 2004. Therefore, the Applicant's MQP date is December 31, 2004.

[19] The Applicant does not challenge the date of the MQP.

[20] The Applicant claims disability as of January 14, 2014, which is long after her MQP date.

[21] On its face, the Applicant's argument cannot succeed. Even if the Applicant is able to establish that she had a severe and prolonged disability on January 14, 2014, this would not prove a severe and prolonged disability on or before December 31, 2004, her MQP.

[22] Once leave to appeal has been granted, the Appeal Division's role is to determine whether a reviewable error set out in subsection 58(1) of the DESD Act has been made by the General Division and, if so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. The Appeal

Division's role is not to re-hear the case *de novo*. It is in this context that the Appeal Division must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[23] I have read and carefully considered the General Division's decision and the record. There is no suggestion that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact that the General Division may have made in a perverse or capricious manner or without regard for the material before it in coming to its decision.

[24] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[25] The application is refused.

Shu-Tai Cheng
Member, Appeal Division