



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 143

Tribunal File Number: AD-16-652

BETWEEN:

**S. B.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Janet Lew

Date of Decision: April 4, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated February 29, 2016. The General Division 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” by the end of her minimum qualifying period on December 31, 2015.

### ISSUE

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

### SUBMISSIONS

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* (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 leave can be granted, 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 of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300. The Applicant submits that the General Division based its decision on several erroneous findings of fact that it made in a perverse or capricious manner or without regard for the material before it.

[5] The Applicant argues that the General Division failed to consider the cumulative impact of what she considers are her primary disabling conditions: fibromyalgia, osteoarthritis and depression. The Applicant claims that the General Division failed to discuss and analyze her mental health issues.

[6] The General Division noted that the Applicant described her main disabling conditions as torn anterior cruciate ligaments, osteoarthritis of both knees, fibromyalgia, anxiety and depression. The member noted that the Applicant saw a psychiatrist for a single consultation, as part of her assessment through Weight Wise. The member also noted that the Applicant's family physician had recommended counselling to address her stress, but that she was unable to access one-on-one counselling sessions because of financial constraints, though she did attend mental health services.

[7] Despite this, there was no discussion or any analysis regarding the Applicant's mental health issues. On this basis, I am satisfied that the appeal has a reasonable chance of success on the ground that the member may have failed to consider the totality of the evidence and, at the same time, failed to consider the cumulative impact of her various medical conditions on her overall capacity.

[8] The Applicant has raised other grounds of appeal as well, but as the Federal Court of Appeal in *Mette v. Canada (Attorney General)*, 2016 FCA 276 suggested, it is unnecessary for the Appeal Division to address all of the grounds of appeal raised by an applicant. Indeed, Dawson J.A. stated that subsection 58(2) of the DESDA "does not require that individual grounds of appeal be dismissed."

## **CONCLUSION**

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