



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. W. v. Minister of Employment and Social Development*, 2017 SSTADIS 148

Tribunal File Number: AD-16-700

BETWEEN:

C. W.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: April 6, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division dated April 21, 2016. The General Division determined that the Applicant was not eligible for a disability pension under the *Canada Pension Plan*, as it found that his disability was not “severe” by the end of his minimum qualifying period on February 28, 2013.

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 did not expressly indicate any grounds under subsection 58(1) of the DESDA. He suggests, however, that the General Division failed to consider the severity of his disability. The Applicant notes that he had a pulmonary embolism, has emphysema and depression and, in approximately September 2012, attempted suicide. He also notes that, in February 2014, he fell on ice and tore a hip flexor tendon in his left leg. He confirms that he did not see a physician until after he attempted suicide.

[6] The medical evidence in the hearing file before the General Division consisted of the following reports:

- A family physician's letter dated September 12, 2013 (GD2-47), that reads that the Applicant "is being treated for mental health problems, osteoarthritis and chronic obstructive lung disease. The patient is undergoing treatment." The physician also wrote, "Currently, he is not fit to work, till 31.12.2013."
- A Government of Alberta - Alberta Works medical information form completed by the family physician on September 11, 2013 (GD2-48 to 49) — lists the health problems as moderate osteoarthritis and moderate chronic obstructive lung disease, with mild limitations on walking, standing, bending, using stairs and sitting. The physician also indicated that the Applicant experiences joint pain and shortness of breath with exertion. The physician also indicated that the Applicant had the capacity for part-time sedentary/light work.

[7] The General Division referred to each of these medical reports, as well as the Applicant's two questionnaires accompanying his application for a disability pension.

[8] Regrettably, there was little documentary evidence to support the Applicant's claims that he has had a severe and prolonged disability since at least the end of his minimum qualifying period. His family physician listed the Applicant's medical conditions and his limitations. However, the family physician also indicated that the Applicant was undergoing treatment and that he was not fit to work until December 31, 2013. According to the family physician, the Applicant already exhibited the capacity for part-time sedentary/light work. The only logical conclusion that the member could draw from the

medical evidence before him was that, despite the Applicant's limitations, the Applicant not only had the capacity regularly of pursuing any substantially gainful occupation, but also "considerable residual work capacity" after the end of the minimum qualifying period. These conclusions were drawn directly from the medical opinions of the family physician.

[9] There is no indication or suggestion that the General Division overlooked or misconstrued any of the evidence, or that the Applicant could have provided any additional evidence.

CONCLUSION

[10] Given these considerations, the application for leave to appeal is refused.

Janet Lew
Member, Appeal Division