



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *T. L. v. Minister of Employment and Social Development*, 2017 SSTADIS 172

Tribunal File Number: AD-16-395

BETWEEN:

**T. L.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet Lew

DATE OF DECISION: April 24, 2017

## REASONS AND DECISION

[1] This appeal is about whether the General Division failed to address inconsistencies in the evidence and, in particular, whether the Appellant's depression began on or before the end of her minimum qualifying period on December 31, 2009.

[2] On December 28, 2015, the General Division determined that the Appellant was not entitled to a Canada Pension Plan disability pension, as it found that her disability was not "severe" by the end of her minimum qualifying period. The Appellant filed an application requesting leave to appeal, invoking several grounds of appeal. I granted leave to appeal on February 13, 2017, on the basis that the General Division may have failed to address the issue of whether the Appellant's depression could have begun on or before the minimum qualifying period.

[3] In her decision, the member indicated that the Appellant had been referred to a psychiatrist in August 2012. The psychiatrist noted that the Appellant's current mental health issues had begun two years prior to the consultation. The member also noted that the Appellant's family physician diagnosed the Appellant with major depression since April 2012. From this, the member concluded that the Appellant's mental health issues began after the minimum qualifying period had passed.

[4] Yet, the General Division also indicated that, in July 2013, the Appellant reported to her psychiatrist, Dr. Gerber, that she began feeling depressed when she started fighting with her insurance company and that she had begun taking anti-depressants approximately six months prior to seeing him. Dr. Gerber's report (at GD5-7 of the hearing file) indicates that the Appellant reported at that time that she started getting depressed about four or five years ago, i.e. in either 2008 or 2009, which would have placed the onset of her depression sometime prior to or around the end of the minimum qualifying period. In the same report, the Appellant also reported that she became depressed "about 2 years after [she] went off work." The member indicated that the Appellant last worked in September 2007. If indeed the Appellant became depressed approximately two years after she last worked, in September 2007, this too would place the onset of her depression within the minimum qualifying period.

[5] The member stated that her findings that the Appellant's mental health issues began after the end of the minimum qualifying period were substantiated by Dr. Gerber's July 2013 report. I am mindful that Dr. Gerber had interviewed the Appellant's mother-in-law, who offered that the Appellant "[felt] edgy ... for the last couple of years" (GD5- 11), but Dr. Gerber did not provide a definitive date for the onset of the Appellant's depression, other than to state that, "Over time, since being on disability in 2007, [the Appellant's] mood has worsened, and it appears that she gradually became increasingly depressed [...]."

[6] In other words, Dr. Gerber did not provide a definitive basis upon which the member could have determined that the Appellant's mental health issues began after the end of her minimum qualifying period on December 31, 2009. If anything, his report suggests that the Appellant's mental health issues began before the end of the minimum qualifying period, and that they have continued since then.

[7] The member should have addressed the Appellant's complaint to Dr. Geber that she became depressed within one to two years after she last worked in 2007, as this suggests that the date of onset of her mental health issues began within the minimum qualifying period.

[8] If the Appellant was indeed depressed on or before the end of the minimum qualifying period, the member should have then assessed whether all of her medical conditions— considered on a cumulative basis— could have amounted to a severe disability.

[9] The Respondent filed submissions on March 29, 2017. The Respondent consents that the Appeal Division should refer the matter back to the General Division for a new hearing by a different member pursuant to subsection 59(1) of the *Department of Employment and Social Development Act*. I agree that this is the appropriate course of action, given the evidence and the findings made by the General Division.

## **DISPOSITION**

[10] The appeal is allowed. The matter is remitted to a different member of the General Division for a redetermination.

Janet Lew  
Member, Appeal Division