



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 187

Tribunal File Number: AD-16-764

BETWEEN:

**P. P.**

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 27, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Applicant seeks leave to appeal the General Division's decision rendered on May 9, 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" on or before her minimum qualifying period of December 31, 2015.

### ISSUE

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

### ANALYSIS

[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 I can grant leave to appeal, I need to be satisfied that the reasons for appeal fall within any of the above-mentioned grounds of appeal, 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 erred in law.

[5] The Applicant submits that the General Division erred as it did not conduct the "real world" analysis set out in *Villani v. Canada (Attorney General)*, [2002] 1 FCR 130,

2001 FCA 248. In particular, the Applicant submits that the member failed to consider the Applicant's personal circumstances, such as her age, education, language abilities or work and life experience. In this particular instance, the Applicant contends that she has a significant language barrier, has significant learning limitations, lacks much education and many transferable skills, and that she has limited work experience.

[6] *Villani* indicates that the statutory test for severity should be applied with some degree of reference to the "real world" and that a decision-maker must consider the particular circumstances of the applicant, such as age, education level, language proficiency and past work and life experience. I agree that the General Division does not appear to have referenced or considered *Villani* in assessing the severity of the Applicant's disability. On this basis alone, I am satisfied that the appeal has a reasonable chance of success.

[7] The Applicant further submits that the General Division failed to conduct a cumulative medical assessment. I have not addressed this specific argument, and I will leave the parties to address them in the course of their submissions on appeal.

## **CONCLUSION**

[8] 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