



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *M. J. v. Minister of Employment and Social Development*, 2017 SSTADIS 276

Tribunal File Number: AD-16-874

BETWEEN:

**M. J.**

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: Shu-Tai Cheng

Date of Decision: June 13, 2017

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] On March 20, 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 a typed letter, which was treated as an application for leave to appeal (Application), with the Tribunal's Appeal Division on June 28, 2016. Attached to the Application were documents dated 2010, 2011 and 2013.

[3] On July 4, 2016, the Tribunal asked the Applicant to provide additional information, as his Application was incomplete.

[4] The Applicant filed further information on July 27, 2016.

### **ISSUE**

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

### **THE LAW**

[6] 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."

[7] 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."

[8] 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.”

[9] 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**

[10] The Applicant’s reasons for appeal can be summarized as follows:

- a) The General Division failed to understand his evidence.
- b) The focus has been primarily on the 2010 year and it should not be. His condition worsened in 2012, and the surgery in 2013 changed his life entirely.
- c) “[T]here is something [in his file] concerning the 2010 year.”
- d) Others have told him he is a good candidate for a CPP disability pension.
- e) His legs are no longer “functionable” and the blood clots in them make him “a heavy risk at every workplace.”
- f) He attached documents from 2010, 2011 and 2013 to the Application.

## **ANALYSIS**

[11] The Applicant applied for a disability pension in March 2015. The Respondent denied the application initially and upon reconsideration on the basis that, while the Applicant had

certain restrictions due to his medical condition, by the end of his minimum qualifying period (MQP) on December 31, 2010, his condition did not prevent him from working continuously.

[12] The Applicant appealed that decision to the Tribunal's General Division. The General Division decided the appeal on the basis of the documents and submissions on file.

[13] The issue before the General Division was whether the Applicant had a severe and prolonged disability on or before December 31, 2010, which was his MQP.

[14] The General Division reviewed the evidence and the parties' submissions. It rendered a written decision that was understandable, sufficiently detailed and that provided a logical basis for the decision. 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.

[15] The Application and documents that the Applicant submitted to the Appeal Division argue that he is disabled and that there is evidence showing his medical condition. He appears to have filed new documents that were not before the General Division, dated 2010, 2011 and 2013.

[16] The General Division stated the correct legislative basis and legal tests. It found that the Applicant had worked until August 2013, claimed disability as of August 2013, attended a technician program in 2011, and had earnings in 2012 and 2013. Therefore, the General Division was not satisfied that the Applicant suffered from a severe disability in accordance with the CPP criteria on or before December 31, 2010.

[17] For the most part, the Application repeats the Applicant's submissions before the General Division (that he is disabled as of August 2013).

[18] The Applicant also seeks to introduce documents (or portions of documents) dated 2010, 2011 and 2013. All but one letter, dated January 2010, is after the MQP. His MQP ended on December 31, 2010.

[19] New evidence is not a ground of appeal under section 58 of the DESD Act. Moreover, documents relating to the Applicant's surgery in August 2013 would not be relevant to whether he had a severe and prolonged disability on or before December 31, 2010.

[20] The Applicant submits that the General Division should not have focused primarily on 2010. He argues that his condition worsened in 2012 and that his life changed after his August 2013 surgery.

[21] It is clear from the Respondent's reconsideration decision, the appeal record and the General Division's decision that the Applicant last met the contributory requirements under the CPP on December 31, 2010. Therefore, the Applicant's MQP ended on December 31, 2010.

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

[23] The Applicant claims disability as of August 2013, which is after his MQP date.

[24] On its face, the Applicant's arguments cannot succeed. Even if the Applicant is able to establish that he had a severe and prolonged disability in August 2013, this would not prove a severe and prolonged disability on or before December 31, 2010, the end of his MQP.

[25] To qualify for the CPP disability pension, the Applicant would need to establish that he had a severe and prolonged disability on or before the end of 2010. This is the reason the Respondent's initial and reconsideration decisions focus on 2010, and why the General Division makes findings on the Applicant's state on or before December 31, 2010.

[26] While he argues that "there is something concerning the 2010 year," the Applicant worked until August 2013, attended college in 2011, and had earnings in 2012 and 2013. These facts are not in dispute. The fact that the Applicant has been seeing a cardiologist since the 1990s and "on many occasions had to leave employment because of [his condition]" are insufficient to establish that he had a severe and prolonged disability, as defined under the CPP legislation, on December 31, 2010, and continuously since then.

[27] Once leave to appeal has been granted, the Appeal Division's role is to determine whether the General Division has made a reviewable error set out in subsection 58(1) of the DESD Act 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. It is not the Appeal Division's role to rehear 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.

[28] I have read and carefully considered the General Division 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.

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

### **CONCLUSION**

[30] The Application is refused.

Shu-Tai Cheng  
Member, Appeal Division