Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *W. M. v. Minister of Employment and Social Development,* 2017 SSTADIS 292

Tribunal File Number: AD-16-930

BETWEEN:

W. M.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shirley Netten

Date of Decision: June 22, 2017

Canada

REASONS AND DECISION

[1] The Applicant seeks leave to appeal a decision of the General Division of the Social Security Tribunal of Canada (Tribunal), dated March 31, 2016, which determined that a disability pension under the *Canada Pension Plan* (CPP) was not payable.

[2] Pursuant to s. 56(1) of the *Department of Employment and Social Development Act* (DESDA), “An appeal to the Appeal Division may only be brought if leave to appeal is granted.” Subsection 58(2) of the DESDA provides that “[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[3] A leave to appeal proceeding is a preliminary step to an appeal on the merits. It is an initial and lower hurdle to be met, and the Applicant does not have to prove the case at the leave stage: *Kerth v. Canada (Minister of Human Resources Development)*, 1999 CanLII 8630 (FC). Rather, the Applicant is required to establish that the appeal has a reasonable chance of success. This means having some arguable ground upon which the proposed appeal might succeed: *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41. However, leave ought not to be granted on a purely theoretical basis, where there is no claim or evidence underpinning a particular ground of appeal: *Canada (Attorney General) v. Hines*, 2016 FC 112.

[4] The grounds of appeal to the Appeal Division, established by s. 58(1) of the DESDA, include “(a) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction.” This is the ground of appeal claimed by the Applicant.

[5] Specifically, the Applicant submits that the General Division “failed to observe a principle of natural justice by making a decision to dismiss my appeal without allowing me to present my case.” She asserts that “the only way my complicated medical case can be understood is to present it to a Tribunal Member” and that she “was not able to present my case as I was following the advice of my Family Physician.”

[6] Natural justice requires (among other things) that an appellant be given a fair and reasonable opportunity to present his or her case. Although neither the Applicant nor her representative ultimately attended an in-person hearing for this appeal, it is, in my view, abundantly clear that the Applicant was given the opportunity to present her case in this appeal.

[7] The Applicant applied for a CPP disability pension in March 2006; the Respondent refused this application initially and upon reconsideration. The Applicant appealed to the Tribunal's predecessor tribunal, the Office of the Commissioner of Review Tribunals (OCRT), in January 2007. In-person hearings scheduled for October 2007, July 2008, March 2009, December 2012 and January 2013 were adjourned, each one at the Applicant's or her representative's request, and for a variety of reasons. The Applicant's current representative became involved in the appeal in late November 2012.

[8] The appeal was subsequently transferred to the Tribunal, and the General Division scheduled an in-person hearing for January 14, 2015. This hearing was adjourned at the Applicant's request, because the representative had only recently received the file documentation and because the Applicant wished to delay proceedings until the fall due to involvement in other legal matters. The hearing was later rescheduled for April 6, 2016. Consistent with s. 11(2) of the *Social Security Tribunal Regulations*, the Applicant and her representative were advised that a further adjournment request would require "exceptional circumstances."

[9] On March 4, 2016, the Applicant's representative sought another postponement of the proceedings, relying upon correspondence from the Applicant's family doctor. Dr. G. Carruthers had written, on February 26, 2016, that assessments were underway that could affect treatment options, and other legal proceedings were ongoing with respect to the Applicant's injuries and the care she received. He concluded that "given the above, the incomplete file with further testing, treatment and functional evaluations to come, the mental and physical stress that [the Applicant] is under, it is medically necessary for her to postpone the CPP Tribunal." On March 10, 2016, the General Division member determined that the appeal would proceed as scheduled, noting that the appeal had been postponed several times at the OCRT, there were no exceptional circumstances justifying a second adjournment by the General Division, and new

medical documentation would not be relevant or significant in light of the minimum qualifying period (MQP). I note that the issue under appeal before the General Division was whether the Applicant had a severe and prolonged disability on or before December 31, 2001 (the end of the MQP), over 14 years earlier.

[10] On March 21, 2016, the Applicant's representative advised the Tribunal that she and the Applicant would not be attending the scheduled hearing. Consequently, the General Division member proceeded on the record, and she issued her decision on March 31, 2016.

[11] It is clear that the Applicant has had numerous opportunities between 2007 and 2016 to present her case through testimony and/or by way of submissions from her representative. A refusal to grant a seventh adjournment of a scheduled in-person hearing, nine years after the filing of an appeal, can hardly be considered unfair or unreasonable. This is particularly so where the timeframe for disability pension entitlement has long passed and new medical evidence would not be relevant to the issue under appeal. The Applicant chose not to have her representative proceed with the most recent hearing, and present her case, in her absence. Moreover, in her Application Requesting Leave to Appeal, the Applicant does not assert that the General Division denied her the opportunity to present her case; rather, she indicates that she has not had this opportunity because she followed her family physician's recommendations not to attend scheduled hearings. In these circumstances, I see no reasonable chance that the appeal might succeed on the ground that the General Division deprived her of the opportunity to present her case and that it thereby failed to observe a principle of natural justice.

CONCLUSION

[12] The Applicant's appeal does not have a reasonable chance of success with respect to the error claimed. The application for leave to appeal is refused.

Shirley Netten
Member, Appeal Division