



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. D. P.*, 2017 SSTADIS 285

Tribunal File Number: AD-16-1138

BETWEEN:

**Minister of Employment and Social Development**

Applicant

and

**D. P.**

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 19, 2017

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] On June 24, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) allowed the Respondent's appeal of a decision by the Minister of Employment and Social Development (Applicant). The Respondent had been denied benefits on a claim for a disability pension under the *Canada Pension Plan* (CPP). The Applicant appealed to the Tribunal's General Division.

[2] The General Division held a hearing by teleconference, and it determined that:

- a) the Respondent had a "severe" and "prolonged" disability in December 2010;
- b) the Applicant had received the Respondent's application for a CPP disability in October 2012;
- c) the Respondent is, therefore, deemed disabled as of July 2011; and
- d) payments of CPP benefits start as of November 2011.

[3] Based on these conclusions, the General Division allowed the appeal.

[4] The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on September 21, 2016, within the 90-day time limit.

[5] The Applicant had requested that the General Division issue a corrigendum of its decision, but the General Division did not do so.

### **ISSUE**

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

## LAW AND ANALYSIS

[7] Pursuant to paragraph 57(1)(b) of the *Department of Employment and Social Development Act* (DESD Act), an application must be made to the Appeal Division within 90 days after the day on which the decision appealed from was communicated to the appellant.

[8] 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.”

[9] 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.”

[10] 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.

[11] The Applicant’s grounds of appeal are that the General Division erred in law and made an erroneous finding of fact in arriving at its decision. The Applicant’s arguments can be summarized as follows:

- a) The Respondent had first applied for a CPP disability pension in October 2012. The Applicant denied this application in February 2013.
- b) The Respondent was deemed to have submitted a second application for a CPP disability pension on September 13, 2013. The Applicant denied this application initially and on reconsideration.

- c) It is this second application that is the subject of the appeal to the General Division.
- d) The General Division erred in fact when it found that the application date was October 4, 2012, which led to an error in applying paragraph 42(2)(b) of the CPP and an error in concluding that the deemed date of disability was July 2011.
- e) The second application date of September 13, 2013, is the date that should be used to determine the deemed date of disability and payment.
- f) The General Division determined that the Respondent had a severe and prolonged disability in December 2010, and the Applicant does not dispute the finding of “severe and prolonged disability.”
- g) The deemed date of onset should be June 2012, based on the second application date.
- h) The General Division erred in law when it determined, pursuant to section 69 of the CPP, that payment would begin in November 2011.
- i) The effective date of payment, as a matter of law, must occur four months after the deemed date of disability, which would therefore be in October 2012.

[12] The General Division summarized the CPP disability pension application materials as follows:

- a) an application for disability benefits date-stamped October 4, 2012;
- b) a CPP Medical Report date-stamped September 13, 2013.

[13] The General Division did not reference the Respondent’s initial decision letter (dated January 17, 2014) or its reconsideration letter (dated August 5, 2014).

[14] The initial decision letter states that the application being considered was received on September 13, 2013.

[15] The reconsideration file is in the appeal record. In addition to the decision letters pertaining to the September 13, 2013, application, there is also an initial decision letter pertaining to the Respondent's October 4, 2012, application for a disability pension.

### **Alleged Errors**

[16] The Applicant alleges errors arising from the General Division's finding on the date of the application for CPP benefits. It does not allege errors with respect to the minimum qualifying period (MQP) or the determination that the Respondent had a severe and prolonged disability in December 2010, prior to the end of the his MQP.

[17] Given that the Respondent made two applications for CPP disability benefits, a determination of which application is the subject of this appeal is central to this matter. This is especially so, as the Respondent needs to rely on the deemed disability provisions of the CPP to receive payment of a disability pension starting prior to his application date.

[18] Because there are two CPP applications on file, the General Division ought to have explained its reasons for finding that the October 2012 application—rather than the September 2013 application—is the one that is being appealed.

[19] In *Oberde Bellefleur OP Clinique dentaire O. Bellefleur (Employer) v. Canada (Attorney General)*, 2008 FCA 13, the Federal Court of Appeal cautioned that if a board (or tribunal) decides that contradictory evidence should be dismissed or assigned little or no weight at all, it must explain the reasons for the decision. Failing to do so presents a risk that its decision will be marred by an error of law or will be qualified as capricious.

[20] By not addressing the two CPP applications on file, the General Division's finding on the application date may be qualified as capricious.

[21] Moreover, the Federal Court of Appeal in *Mette v. Canada (Attorney General)*, 2016 FCA 276, indicated that it is unnecessary for the Appeal Division to address all the grounds of appeal that an applicant has raised. In response to the Respondent's arguments that the Appeal Division was required to refuse leave to appeal on any ground it found to be without merit, Dawson J.A. stated that subsection 58(2) of the DESD Act "does not require that individual

grounds of appeal be dismissed. [...] individual grounds may be so inter-related that it is impracticable to parse the grounds so that an arguable ground of appeal may suffice to justify granting leave.” This application is one of the situations described in *Mette*.

[22] Because the alleged errors of law may be interrelated with the analysis of whether the application date is in October 2012 or September 2013, I will not parse the grounds of appeal any further at this stage of the proceedings.

### **Leave to Appeal Granted**

[23] On the grounds that there may be an error in the finding of facts or an error of law, I am satisfied that the appeal has a reasonable chance of success.

### **CONCLUSION**

[24] The Application is granted under paragraphs 58(1)(b) and (c) of the DESD Act.

[25] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[26] I invite the parties to make written submissions on whether a hearing is appropriate and, if it is, on the form of the hearing as well as on the merits of the appeal.

Shu-Tai Cheng  
Member, Appeal Division