



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. D. M.*, 2017 SSTADIS 316

Tribunal File Number: AD-16-1199

BETWEEN:

**Minister of Employment and Social Development**

Applicant

and

**D. M.**

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: July 5, 2017

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] On July 18, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) decided that a disability pension under the *Canada Pension Plan* (CPP) was payable to the Respondent.

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

- a) the Respondent's minimum qualifying period had ended on December 31, 2015;
- b) the Respondent was a credible witness, and the testimony of her mother, husband and daughter supported hers;
- c) the Respondent has no capacity to work, and her depression, anxiety and chronic pain make her incapable of regularly pursuing any substantially gainful employment;
- d) her disabling conditions have persisted since at least 2013, and her disability is prolonged;
- e) therefore, the Respondent had a severe and prolonged disability in July 2013; and
- f) payments of CPP benefits start as of November 2013.

[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 October 14, 2016, within the 90-day time limit.

### **ISSUE**

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

## **THE LAW**

[6] 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.

[7] According to subsections 56(1) and 58(3) of the DESD Act, an appeal to the Appeal Division may be brought only 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 leave 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 grounds of appeal are that the General Division erred in law and made erroneous findings of fact in arriving at its decision. The Applicant's arguments can be summarized as follows:

- a) The General Division failed to apply binding Federal Court of Appeal jurisprudence.
- b) The General Division cited *Villani v. Canada (Attorney General)*, 2001 FCA 248, but it made no analysis that applies the *Villani* factors to the Respondent's facts.

- c) The evidence does not support a finding of disability. The General Division relied heavily on the Respondent's testimony and ignored evidence in the medical record.
- d) The General Division referred to a pharmacy printout that was not a part of the Tribunal's record.

## **ANALYSIS**

### **Alleged error of law**

[11] The General Division mentioned the *Villani* case at paragraph 31 of its decision. At paragraph 41, the General Division appears to have referred to the *Villani* factors by stating: "The Tribunal has taken into account the characteristics of the Appellant including the fact that she has a grade 12 education and university degree; and she was 33 years of age at the time of her application. Her prior work was as a crisis team supervisor."

[12] The Applicant argues that there was no analysis that the General Division carried out that applies the *Villani* factors to the Respondent's facts.

[13] In *Murphy v. Canada (Attorney General)*, 2016 FC 1208, the Federal Court recently determined that the General Division's failure to reasonably determine a claimant's workforce attachment means that the *Villani* real-world assessment was incomplete.

[14] Here, the General Division decision does not appear to have conducted the kind of assessment suggested by the *Murphy* decision. Therefore, whether the General Division failed to reasonably determine the Respondent's workforce attachment in its discussion and analysis of the *Villani* factors, and thereby erred in law, warrants further review.

[15] The Applicant's submissions on this point, as set out in the Application, are sufficient to satisfy me that the appeal has a reasonable chance of success at the leave to appeal stage.

### **Alleged erroneous findings of fact**

[16] The Applicant argues that the General Division made a number of erroneous findings of fact when it found that the Respondent suffered from a severe and prolonged disability, because the totality of the evidence did not support a finding of disability and because contradictory medical evidence was ignored.

[17] 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."

[18] This application is one of the situations described in *Mette*. Because the alleged error of law and the analysis of whether the Applicant's medical condition was severe and prolonged may be interrelated, I will not parse the grounds of appeal any further at this stage of the proceedings.

### **CONCLUSION**

[19] The Application is granted.

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

Shu-Tai Cheng  
Member, Appeal Division