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

Citation: *G. V. v. Minister of Employment and Social Development*, 2017 SSTADIS 319

Tribunal File Number: AD-17-31

BETWEEN:

G. V.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

DECISION BY: Neil Nawaz

DATE OF DECISION: July 5, 2017

REASONS AND DECISION

DECISION

[1] The appeal is dismissed.

INTRODUCTION

[2] This is an appeal of a decision of the General Division of the Social Security Tribunal of Canada (Tribunal), which summarily dismissed the Appellant's appeal for the Canada Pension Plan (CPP) disability benefit because it determined that he could not cancel his retirement pension in favour of a disability pension if the disability onset date was prior to the commencement of his retirement pension. The General Division dismissed the appeal because it was not satisfied that it had a reasonable chance of success.

[3] No leave to appeal is necessary in the case of an appeal brought under subsection 53(3) of the *Department of Employment and Social Development Act* (DESDA), as there is an appeal as of right when dealing with a summary dismissal from the General Division.

[4] As I have determined that no further hearing is required, this appeal is proceeding pursuant to paragraph 37(*a*) of the *Social Security Tribunal Regulations* (SST Regulations).

OVERVIEW

[5] The Appellant applied for, and began receiving, an early CPP retirement pension as of June 2011, the month after he turned 60. He applied for the CPP disability benefit on May 27, 2016. In his application, he indicated that he stopped working as a self-employed human resources manager in July 2008 due to symptoms related to multiple sclerosis.

[6] The Respondent refused the application initially and on reconsideration because it was made more than 15 months after the Appellant began receiving his CPP retirement pension. On October 4, 2016, the Appellant appealed these refusals to the General Division. The General Division advised the Appellant, by way of a letter dated October 20, 2016, of its intention to summarily dismiss his appeal. After reviewing the Appellant's submissions, the General

Division summarily dismissed the appeal on November 21, 2016, because the law does not allow a retirement pension to be cancelled in favour of a disability pension more than 15 months after the commencement of the retirement pension.

[7] On January 12, 2017, the Appellant filed an appeal of the summary dismissal decision with the Tribunal's Appeal Division, alleging errors on the part of the General Division. I have decided that an oral hearing is unnecessary and that the appeal will proceed on the basis of the documentary record for the following reasons:

(a) There are no gaps in the file and there is no need for clarification.

(b) This form of hearing respects the requirement under the SST Regulations to proceed as informally and as quickly as circumstances, fairness and natural justice permit.

THE LAW

Department of Employment and Social Development Act

[8] Subsection 53(1) of the DESDA states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success. Under subsection 56(2), no leave to appeal is required to appeal a summary dismissal to the Appeal Division.

[9] Subsection 54(1) of the DESDA makes it clear that the General Division can take only an action that the Minister should have otherwise taken. The General Division may dismiss the appeal or confirm, rescind or vary a decision of the Minister or the Commission in whole or in part, or it may give the decision that the Minister or the Commission should have given.

[10] Section 22 of the SST Regulations states that before summarily dismissing an appeal, the General Division must give the Appellant notice in writing and allow the Appellant a reasonable period of time to make submissions.

[11] According to subsection 58(1) of the DESDA, 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 made in a perverse or capricious manner or without regard for the material before it.

Canada Pension Plan

[12] Paragraph 44(1)(*b*) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

(a) be under 65 years of age;

(b) not be in receipt of the CPP retirement pension;

(c) be disabled; and

(d) have made valid contributions to the CPP for not less than the minimum qualifying period (MQP).

[13] The requirement that an applicant not be in receipt of the CPP retirement pension is also set out in subsection 70(3) of the CPP, which states that once a person starts to receive a CPP retirement pension, that person cannot apply or reapply, at any time, for a disability pension. There is an exception to this provision, and it is found in section 66.1 of the CPP.

[14] Section 66.1 of the CPP and section 46.2 of the CPP Regulations allow a beneficiary to cancel a benefit after it has started if the request to cancel the benefit is made, in writing, within six months after payment of the benefit has started.

[15] According to subsection 66.1(1.1) of the CPP, if a person does not cancel a benefit within six months after payment of the benefit has started, the only way a retirement pension can be cancelled in favour of a disability benefit is if the person is deemed to be disabled *before* the month for which the retirement pension first became payable.

[16] Subsection 66.1(1.1) of the CPP must be read with paragraph 42(2)(*b*) of the CPP, which states that the earliest a person can be deemed to be disabled is 15 months before the date on which the Respondent receives the disability application.

[17] The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favour of the disability pension where the disability application is made 15 months or more after payment of the retirement pension has started.

[18] According to section 69 of the CPP, payments start four months after the deemed date of disability.

ISSUES

[19] The issues before me are as follows:

(a) How much deference should the Appeal Division extend to decisions of the General Division?

(b) Did the General Division err in summarily dismissing the Appellant's claim for the CPP disability benefit because he was already in receipt of the CPP retirement pension?

SUBMISSIONS

[20] In his notice of appeal, the Appellant wrote that he applied for an early CPP retirement pension at age 60 because he was in financial need. At the time, he was unaware of the disability benefit. He has neither backdated his disability to predate his retirement pension, nor is he attempting to "double dip." He proposes that any money he has received pursuant to his retirement pension should be deducted from whatever disability payments are owing to him. He maintains that his entitlement to the disability benefit is not in question: only the starting date.

[21] The Appellant believes that the Respondent's reconsideration decision and the General Division's decision are incorrect, unfair and contrary to the purpose of the CPP. He feels that he is being unduly punished.

[22] The Respondent made no submissions.

ANALYSIS

Standard Degree of Deference Owed to the General Division

[23] Until recently, it was accepted that appeals to the Appeal Division were governed by the standards of review set out by the Supreme Court of Canada in *Dunsmuir v. New Brunswick.*[1] In matters involving alleged errors of law or a failure to observe principles of natural justice, the applicable standard was held to be correctness, reflecting a lower threshold of deference deemed to be owed to a first-level administrative tribunal. In matters where erroneous findings of fact were alleged, the standard was held to be reasonableness, reflecting a reluctance to interfere with findings of the body tasked with hearing the factual evidence.

[24] The Federal Court of Appeal decision in *Canada v. Huruglica*[2] rejected this approach, holding that administrative tribunals should not use standards of review that were designed to be applied by appellate courts. Instead, administrative tribunals must look first to their home statutes for guidance in determining their role.

[25] Although *Huruglica* deals with a decision that emanated from the Immigration and Refugee Board, it has implications for other administrative tribunals. In this case, the Federal Court of Appeal held that it was inappropriate to import the principles of judicial review, as set out in *Dunsmuir*, to administrative forums, as the latter may reflect legislative priorities other than the constitutional imperative of preserving the rule of law: "One should not simply assume that what was deemed to be the best policy for appellate courts also applies to specific administrative appeal bodies."

[26] This premise leads the Court to a determination of the appropriate test that flows entirely from an administrative tribunal's governing statute:

> [T]he determination of the role of a specialized administrative appeal body is purely and essentially a question of statutory interpretation, because the legislator can design any type of multilevel administrative framework to fit any particular context. An exercise of statutory interpretation requires an analysis of the words of the IRPA [*Immigration and Refugee Protection Act*] and its object […] The textual, contextual and purposive approach mandated by modern statutory interpretation principles provides us with all the necessary tools to

[1] *Dunsmuir v. New Brunswick*, [2008] 1 SCR 190, 2008 SCC 9.
[2] *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93.

> determine the legislative intent in respect of the relevant provisions of the IRPA and the role of the RAD [Refugee Appeal Division].

[27] The implication here is that the standards of reasonableness or correctness will not apply unless those words, or their variants, are specifically contained in the founding legislation. Applying this approach to the DESDA, one notes that paragraphs 58(1)(*a*) and (*b*) do not qualify errors of law or breaches of natural justice, which suggests that the Appeal Division should afford no deference to the General Division's interpretations.

[28] The word "unreasonable" is nowhere to be found in paragraph 58(1)(*c*), which deals with erroneous findings of fact. Instead, the test contains the qualifiers "perverse or capricious" and "without regard for the material before it." As suggested by *Huruglica*, those words must be given their own interpretation, but the language suggests that the Appeal Division should intervene when the General Division bases its decision on an error that is clearly egregious or at odds with the record.

Summary Dismissal

[29] The General Division dismissed the Appellant's appeal because his application for the CPP disability benefit was received in May 2016, which was more than 15 months after his retirement pension commenced.

[30] Having reviewed its decision, I am satisfied that the General Division did not breach any principle of natural justice or commit an error in fact or law. The General Division assessed the record and concluded that the Appellant, as a recipient of the CPP retirement pension, was effectively barred from receiving CPP disability benefits. The General Division saw no arguable case on any ground that the Appellant had raised, and I see no reason to interfere with its reasoning. My authority permits me to determine only whether any of his reasons for appealing fall within the specified grounds and whether any of them has a reasonable chance of success. While the General Division's analysis did not arrive at the conclusion the Appellant would have preferred, my role is to determine whether the decision is defensible on the facts and the law, rather than to reassess the evidence.

[31] While I acknowledge that the General Division's reasons were scanty and did not explicitly link its decision to summarily dismiss to all relevant statutory provisions, I am satisfied that the outcome it prescribed was correct. Under paragraph 42(2)(*b*), the earliest the Appellant could be deemed to be disabled was February 2015—15 months before his CPP disability application was submitted. As the Appellant's retirement pension started in June 2011, it was not possible for him to be deemed disabled *before* he started receiving the retirement pension.

[32] The Appellant has explained that he was unaware of the implications of taking an early CPP retirement pension, but I see no recourse available to him under the law. The General Division was bound to follow the letter of the CPP, and so is the Appeal Division: Subsection 66.1(1.1) indicates that the cancellation of a retirement pension for disability benefits is possible only where an applicant can be deemed disabled before the retirement pension becomes payable. In his notice of appeal, the Appellant stated that he can no longer work, but the issue here is not whether he has a disability that is "severe and prolonged," but whether he is statute-barred from receiving the CPP disability benefit because he is already receiving a CPP retirement pension.

[33] If the Applicant is asking me to exercise fairness and reverse the General Division's decision, I must clarify that I lack the discretionary authority to do so and can exercise such jurisdiction only as granted by the Appeal Division's enabling statute. Support for this position may be found in *Pincombe v. Canada*,[3] among other cases, which have held that an administrative tribunal is not a court but a statutory decision-maker and therefore not empowered to provide any form of equitable relief.

CONCLUSION

[34] As noted, even if the Appellant could prove that he was disabled, the earliest month, under paragraph 42(2)(*b*) of the CPP, in which he could have qualified for disability benefits was February 2015, which was well after his CPP retirement pension began and after the six-month deadline to cancel his retirement pension, which had elapsed in December 2011. The Appellant has neither demonstrated how the General Division incorrectly applied these

[3] *Pincombe v. Canada (Attorney General)* (1995), 189 N.R. 197 (F.C.A.).

provisions of the CPP, nor has he introduced any evidence to show that that he attempted to cancel his early retirement pension within the requisite six months.

[35] For the reasons set out above, the appeal is dismissed.

Member, Appeal Division