



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 302

Tribunal File Number: AD-16-1229

BETWEEN:

L. B.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: June 29, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Respondent had previously denied the Applicant benefits on a claim for a disability pension under the *Canada Pension Plan* (CPP). The Applicant then appealed the decision to the General Division of the Social Security Tribunal (Tribunal).

[2] On July 25, 2016, the Tribunal's General Division allowed the Applicant's appeal of the Respondent's decision.

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

- a) the Applicant had a "severe" and "prolonged" disability in November 2010;
- b) the Respondent had received the Applicant's application for a CPP disability pension in August 2013;
- c) the Applicant is, therefore, deemed disabled as of May 2012; and
- d) payments of CPP benefits start as of September 2012.

[4] On the basis of these conclusions, the General Division allowed the appeal.

[5] The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on October 25, 2016 (within the 90-day time limit).

ISSUE

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

THE 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 made errors in arriving at its decision. The Applicant’s arguments can be summarized as follows:

- a) The effective start date for payments of her CPP disability pension should be earlier “for income tax purposes.”
- b) She was on disability insurance from April 2000 to October 2001, from August 2006 to December 2008, and from November 2010 to present.
- c) Payments of her CPP disability pension should start earlier than September 2012.

[12] The Applicant made handwritten notes on a copy of the General Division decision that she described as “corrections.”

[13] The Applicant’s reason for appeal is that she seeks an earlier start date for payments of her CPP disability pension.

[14] The Applicant does not dispute the following findings that the General Division made:

- a) Her minimum qualifying period ended on December 31, 2013.
- b) The Respondent received her CPP application in August 2013.

[15] The General Division found that the Applicant had a severe and prolonged disability in November 2010. The Applicant argues that she was disabled before November 2010, and she points to earlier periods when she was on disability insurance.

[16] I note, however, that it is not the finding of the date of disability that results in a CPP disability pension start date of September 2012. In this matter, it is the date on which the Applicant made an application for CPP benefits with the Respondent.

[17] Paragraph 42(2)(b) of the CPP states:

a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be, as the case may be, disabled, but in no case shall a person — including a contributor referred to in subparagraph 44(1)(b)(ii) — be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made.

[18] The words “in no case shall a person [...] be deemed to have become disabled earlier than fifteen months before the time of the making of any application” mean that the earliest start date for payment is 15 months before the making of the application. The Respondent received the Applicant’s CPP disability pension application in August 2013, and 15 months before that is May 2012.

[19] Irrespective of the date of disability, May 2012 is the earliest deemed date of disability, in the specific circumstances of this matter.

[20] According to section 69 of the CPP, payments start four months after the deemed date of disability, which is September 2012.

[21] Even if the Applicant were able to establish that she had a “severe” and “prolonged” disability prior to November 2010, there would be no effect on the start date of CPP disability pension payments.

[22] 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, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it.

[23] In order to have a reasonable chance of success, the Applicant must explain how the General Division has made at least one reviewable error. The Application is deficient in this regard, and I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[24] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division