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

Citation: *R. V. v. Minister of Employment and Social Development*, 2017 SSTADIS 304

Tribunal File Number: AD-16-243

BETWEEN:

R. V.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: June 29, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the General Division decision dated November 16, 2015, which determined that the Applicant was ineligible for a disability pension under the *Canada Pension Plan*, as the General Division had found that he did not have a severe and prolonged disability by the end of his minimum qualifying period on December 31, 2012.

ISSUE

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

ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development* (DESDA) sets out the grounds of appeal as being limited to 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.

[4] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA, and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300. The Applicant alleges that the General Division failed to observe a principle of natural justice and that it based its decision on an erroneous finding of fact that it had made without regard for the material before it.

[5] The Applicant submits that the General Division erred at paragraph 38 in finding that the "absence of any psychiatric diagnosis of a mental illness or emotional disorder severe enough to be disabling in its own right precludes a finding that the [Applicant] meets the criteria of a severe disability."

[6] The Applicant argues that this finding is "fundamentally inconsistent" with the evidence, particularly that of the family physician, Dr. Parhar, who, in his medical-legal report of July 25, 2012 (paragraph 22), diagnosed him with an adjustment disorder and anxiety, and, in his subsequent report of September 10, 2015, diagnosed him with depressed mood, anxiety and adjustment disorder (paragraph 31). The Applicant also notes that, in his September 2015 report, Dr. Parhar had also diagnosed him with anxiety with a specific phobia of being in a motor vehicle accident, adjustment disorder, depressed mood with sadness, mood swings, decreased appetite, decreased energy, decreased sleep and cerebral problems, including decreased concentration and short-term memory loss.

[7] The Applicant submits that Dr. Parhar's medical opinion was in turn considered by Richard Carlin, a vocational expert, whose report, he argues, was accepted by the General Division.

[8] The Applicant argues that these medical opinions support a finding of a severe disability, and he suggests that the General Division was required to accept them, given that there was no evidence that challenged the findings of his treating physicians regarding the severity or duration of his illness.

[9] The fact that Dr. Parhar diagnosed the Applicant with depressed mood, anxiety and adjustment disorder, among other things, does not in and of itself establish the severity of a disability, as a decision-maker is required to consider other factors as well. However, the General Division may have erred in law in suggesting that a "psychiatric diagnosis of a mental illness or emotional disorder severe enough to be disabling in its own right" was required in the circumstances of this case in order to find the Applicant severely disabled. Although it was in the context of a motor vehicle accident, in *Saadati v. Moorhead*, 2017 SCC 28, the Supreme Court of Canada held that a claimant is not required to prove a

recognized psychiatric injury to establish a legally compensable mental injury. *Saadati* may be applicable.

[10] I acknowledge that the Applicant has raised other issues in his application for leave to appeal, but it is unnecessary for me to address each of them. In *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal indicated that it is unnecessary for the Appeal Division to address all the grounds of appeal that an applicant has raised, and that an arguable ground of appeal may suffice to justify granting leave to appeal.

CONCLUSION

[11] I am satisfied that the appeal has a reasonable chance of success on at least the ground that I have identified above. Accordingly, the application for leave to appeal is granted. This decision granting leave to appeal does not, in any way, prejudge the result of the appeal on the merits of the case.

[12] The parties may provide submissions on whether any additional hearing is required and, if so, the type of hearing that is appropriate.

Janet Lew
Member, Appeal Division