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

Citation: *M. G. v. Minister of Employment and Social Development*, 2017 SSTADIS 343

Tribunal File Number: AD-16-857

BETWEEN:

M. G.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Nancy Brooks

Date of Decision: July 18, 2017

Canada

REASONS AND DECISION

[1] The Applicant seeks leave to appeal a decision of the General Division of the Social Security Tribunal of Canada (Tribunal), which determined that he was not entitled to a disability pension under the *Canada Pension Plan* ("CPP").

[2] The grounds of appeal to the Appeal Division are set out in s. 58(1) of the *Department of Employment and Social Development Act* ("DESDA"):

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.

[3] Pursuant to s. 56(1) of the DESDA, "An appeal to the Appeal Division may only be brought if leave to appeal is granted." Subsection 58(2) provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success." In this context, having a reasonable chance of success means "having some arguable ground upon which the proposed appeal may succeed": *Osaj v. Canada (Attorney General)*, 2016 FC 115, at para. 12.

[4] The Applicant began receiving a retirement pension under the CPP in April 2013. He applied for a disability pension in March 2013.

[5] Subsection 66.1(1.1) of the CPP provides that where a person is receiving a retirement pension, the retirement pension may be cancelled in favour of a disability benefit only if the person had become disabled prior to the month the retirement pension became payable. In the Applicant's case, because he started receiving a retirement pension in April 2013, in order for his retirement pension to be cancelled in favour of a disability benefit, he had to prove on the

balance of probabilities that he became disabled within the meaning of the CPP on or before March 31, 2013.

[6] The Respondent denied the application for a disability pension initially and upon reconsideration. The Applicant appealed that decision to the General Division.

[7] The General Division concluded that the medical evidence and reports produced by the Applicant did not establish a severe disability (para. 44 of the reasons). The member noted that the Applicant stated he was not taking any medication for his depression and she found that the use of the type of medication being taken by the Applicant (herbal medication, creams and over- the-counter Tylenol and non-steroidal anti-inflammatory drugs) did not support the existence of severe disabling pain or severe depression and anxiety (para. 46). She noted that the Applicant had testified that he had worked from November or December 2012 until February or March 2013 as a security guard, eight hours per night, four nights per week, for a period of approximately three months. She also found the Applicant had worked as a security guard from November 2014 until July 2015. She concluded that the evidence on file and from the hearing did not indicate that the Applicant's condition was not severe, or that he was incapable regularly of pursuing any substantially gainful occupation, on or before March 31, 2013 (paras. 51−53).

[8] In his application for leave to appeal, the Applicant stated that the General Division "did not see the information which I provided in the hearing on May 4, 2016." He also stated his disagreement with the outcome as he believes he has an illness and "feel[s] unprotected from the medical system and the Government of Canada and the Social Security Tribunal." (AD1-5)

[9] In an email sent by Tribunal staff on July 8, 2016, the Applicant was asked to clarify "[w]hat information or records did you provide which you say that the General Division member did not see?" (AD1B-1) In his response to this email, the Applicant stated that the member "didn't see the reality of my illness concern they ignore my problems [*sic*]." He stated he was waiting for an appointment to see an orthotics specialist and that he could not walk long distances due to his osteoarthritis and cervical spine problems. He stated the General Division had based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner without regard for the material before it. The Applicant also submitted that

because the General Division member did not "pay attention to my problem," she erred in law in making her decision. (AD1B-1).

[10] The gravamen of the Applicant's submissions is that the General Division member based her decision on an erroneous finding of fact that she made in a perverse or capricious manner or without regard to the material before her, an argument falling within the ambit of s. 58(1)(*c*) of the DESDA.

[11] While it is clear that the Applicant disagrees with the General Division's decision, he has provided no particulars of what evidence the General Division member failed to take into account. I bear in mind the Federal Court's decision in *Griffin v. Canada (Attorney General)*, 2016 FC 874, where Justice Boswell provided guidance as to how the Appeal Division should address applications for leave to appeal under s. 58(1) of the DESDA:

> [20] It is well established that the party seeking leave to appeal bears the onus of adducing all of the evidence and arguments required to meet the requirements of subsection 58(1): see, e.g., *Tracey*, above, at para 31; also see *Auch v. Canada (Attorney General)*, 2016 FC 199 at para 52, [2016] FCJ No 155. Nevertheless, the requirements of subsection 58(1) should not be applied mechanically or in a perfunctory manner. On the contrary, the Appeal Division should review the underlying record and determine whether the decision failed to properly account for any of the evidence: *Karadeolian v. Canada (Attorney General)*, 2016 FC 615 at para 10, [2016] FCJ No 615.

[12] I have reviewed the underlying record and have found no instance where the General Division decision failed to properly account for any of the evidence.

[13] It is the role of the General Division, as the trier of fact, to review and weigh the evidence and reach a decision based on the facts and the law: see *Simpson v. Canada (Attorney General)*, 2012 FCA 82. It is not the role of the Appeal Division to reweigh the evidence. Nor is an appeal to the Appeal Division an opportunity to re-argue the case and ask for a different outcome: *Marcia v. Canada (Attorney General)*, 2016 FC 1367.

[14] I have concluded that the Applicant has not raised any arguable ground upon which the proposed appeal may succeed. I am therefore satisfied that the proposed appeal has no reasonable chance of success.

DISPOSITION

[15] The application for leave to appeal is refused.

Nancy Brooks
Member, Appeal Division