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

Citation: *C. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 359

Tribunal File Number: AD-16-972

BETWEEN:

C. B.

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: July 24, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the General Division decision dated April 14, 2016, which determined that the Applicant was ineligible for a disability pension under the *Canada Pension Plan.* The General Division found that her disability had not been "severe" by the end of her minimum qualifying period on December 31, 2011.

ISSUE

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

ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* (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 I can grant 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 of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The Applicant submits that the General Division erred in law and that it also based its decision on an erroneous finding of fact that it had made in a perverse and capricious manner or without regard for the material before it.

[6] The Applicant set out all the documentary and oral evidence before the General Division. The Applicant argues that the General Division failed to mention and, therefore, failed to consider Dr. Changela's medical letters dated September 20, 2012 (GD3-241) and January 27, 2013 (GD13-17). The Applicant suggests that these letters were of some probative value, as they outlined that the General Division had overlooked her multiple medical problems. In other words, the Applicant claims that the General Division failed to consider the totality of the evidence before it. For instance, Dr. Changela had diagnosed her with osteoarthritis and chronic lumbo-sacral degenerative disease, among other things, but the General Division neglected to consider these.

[7] In his September 2012 letter, Dr. Changela wrote that the Applicant has multiple medical problems, including "osteoarthritis Hips chronic Lumbo sacral deg disease [*sic*]", before proceeding to describe her condition in a more general manner. For instance, he wrote, "this illness get exaggerated odd times as well & it is impossible for her to work to do her at her job even at home proper work or may be very minimal," without identifying or providing any context as to which of the medical problems he might have been considering. It is unclear whether Dr. Changela was referring to the Applicant's osteoarthritis or degenerative disease, or to something else.

[8] Dr. Changela's subsequent opinions, including his January 29, 2013 letter, however, made no mention of any problems involving osteoarthritis or degenerative disease.

[9] My cursory review of the medical records suggests that there was very little, if anything, in the medical records regarding the Applicant's osteoarthritis and degenerative disease, other than Dr. Changela's diagnoses. Nevertheless, I am prepared to grant leave to appeal on the basis that the General Division may have failed to consider the totality of the evidence before it. There was some evidence before the General Division that the Applicant has osteoarthritis and lumbo-sacral degenerative disease and yet, it appears that

the General Division did not mention or discuss either of these two conditions in its decision.

[10] On this particular issue, the Applicant should refer to any other documentary or other evidence that discussed the Applicant's osteoarthritis and degenerative disease. She should also consider how a mere diagnosis has any probative value on the issue of the severity of the Applicant's disability. After all, a diagnosis alone generally does not establish the severity of a disability.

[11] The Applicant has raised several other issues in support of her application requesting leave to appeal. 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. As I have already granted leave to appeal, I agree that it is unnecessary to address them at this juncture.

CONCLUSION

[12] The application for leave to appeal is granted, although this decision of course is not determinative of whether the appeal itself will succeed.

[13] In accordance with subsection 58(5) of the DESDA, the application for leave to appeal hereby becomes the notice of appeal. Within 45 days after the date of this decision, the parties may (a) file submissions with the Appeal Division; or (b) file a notice with the Appeal Division stating that they have no submissions to file. The parties may make submissions regarding the form the hearing of the appeal should take (e.g. by teleconference, videoconference, in person or on the basis of the parties' written submissions), together with submissions on the merits of the appeal.

Janet Lew
Member, Appeal Division