



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. R. Z.*, 2017 SSTADIS 394

Tribunal File Number: AD-17-66

BETWEEN:

Minister of Employment and Social Development

Applicant

and

R. Z.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: August 4, 2017

REASONS AND DECISION

INTRODUCTION

[1] On October 26, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) decided that a disability pension under the *Canada Pension Plan* (CPP) was payable to the Respondent.

[2] The General Division had held a videoconference hearing, and it had determined that:

- a) the Respondent's minimum qualifying period (MQP) had ended in 2006;
- b) the Respondent gave straightforward and credible evidence pertaining to the advancement of his Parkinson's disease;
- c) the Respondent had been laid off in November 2004 and he felt unable to continue to work at the level that was required of an engineer;
- d) he attempted to pursue work in the field of education but that attempt failed due to symptoms of Parkinson's;
- e) although the Respondent was not yet diagnosed with Parkinson's in 2005, the symptoms were the reason for his inability to maintain employment;
- f) the evidence indicates that in December 2006, the Respondent was suffering from the effects of Parkinson's disease and had met the criteria required to establish a severe and prolonged disability by the MQP.

[3] Based on these conclusions, the General Division allowed the appeal.

[4] The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on January 25, 2017, within the 90-day time limit.

ISSUE

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

THE LAW

[6] 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.

[7] According to subsections 56(1) and 58(3) of the DESD Act, an appeal to the Appeal Division may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[8] Subsection 58(2) of the DESD Act provides that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[9] 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.

SUBMISSIONS

[10] The Applicant's grounds of appeal are that the General Division erred in law and made erroneous findings of fact in arriving at its decision. The Applicant's arguments can be summarized as follows:

- a) The General Division failed to properly apply binding Federal Court of Appeal jurisprudence.

- b) The General Division cited *Klabouch v. Canada (Social Development)*, 2008 FCA 33, but it conducted an insufficient analysis of the Respondent's capacity to work in determining the severity of his disability.
- c) The General Division cited *Inclima v. Canada (Attorney General)*, 2003 FCA 117, but it misapplied the case when it found that the Respondent's attempt to return to university to complete a Bachelor of Education met the *Inclima* test.
- d) The evidence does not support a finding of disability. The General Division stated that the Respondent's presentation and diagnosis in January 2011 reflected the severity of his functional limitations in December 2006. The Respondent's answer to the CPP questionnaire (question 16) was that he felt that he could no longer work due to his medical condition as of January 2011 and not as of December 2006. He testified that his Parkinson's symptoms in December 2006 were 3/10, as opposed to 9/10 at the time of the hearing.
- e) The General Division erred in fact in mischaracterizing the Respondent's return to school as a failed attempt to work. The fact that the Respondent was not suited to be a teacher does not indicate disability or a failed attempt. His training in the field of education in 2007 shows that he still had capacity post-MQP.
- f) The General Division disregarded the Respondent's testimony that he did not return to work due to economic factors and instead concluded that he did not return to work due to medical reasons.
- g) The General Division misstated the date the original application for disability benefits was received. The application was deemed received in March 2015, not in May 2015, as found by the General Division.

ANALYSIS

Alleged error of law

[11] The General Division mentioned *Klabouch* at paragraph 29 of its decision. The Applicant argues, however, that the Respondent was diagnosed with Parkinson's in January

2011 and the General Division found that having Parkinson's symptoms as at December 2006 was indicative of disability at that time.

[12] As for *Inclima*, the General Division mentioned it at paragraphs 30 and 37 of its decision. However, the Applicant submits that the case was misapplied to the facts of the present matter.

[13] I note that the General Division relied on *Wieler v. Minister of Human Resources Development*, CP20466 (incorrectly cited as "(October 28, 2003), CP 19346 (PAB)" in the General Division decision) to conclude that it is unnecessary for there to be a medical opinion at or about the time of the MQP and that the trier of fact is entitled to draw rational inferences from the evidence presented. On this basis, the General Division member found "that given the educational level of the [Respondent] and his background that his assumption that his symptoms at the time of his MQP, although not yet diagnosed, were the reason for his inability to maintain his employment."

[14] Here, the General Division does not appear to have conducted the kind of assessment suggested by *Klabouch* and *Inclima*. Therefore, whether the General Division failed to apply binding Federal Court of Appeal jurisprudence, and thereby erred in law, warrants further review.

[15] The Applicant's submissions on this point, as set out in the Application, are sufficient to satisfy me that the appeal has a reasonable chance of success at the leave to appeal stage.

Alleged erroneous findings of fact

[16] The Applicant argues that the General Division made a number of erroneous findings of fact when it found that the Respondent suffered from a severe and prolonged disability because the totality of the evidence did not support a finding of disability. The Applicant refers to a number of specific errors in its Application.

[17] 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. In response to the Respondent's arguments that the Appeal Division was required to refuse leave to appeal on any ground it found to be without merit, Dawson J.A.

stated that subsection 58(2) of the DESD Act “does not require that individual grounds of appeal be dismissed [...] individual grounds may be so inter-related that it is impracticable to parse the grounds so that an arguable ground of appeal may suffice to justify granting leave.”

[18] This application is one of the situations described in *Mette*. Because the alleged error of law and the analysis of whether the Applicant’s medical condition was severe and prolonged may be interrelated, I will not parse the grounds of appeal any further at this stage of the proceedings.

CONCLUSION

[19] The Application is granted.

[20] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Shu-Tai Cheng
Member, Appeal Division