



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. B. O.*, 2017 SSTADIS 401

Tribunal File Number: AD-16-1338

BETWEEN:

Minister of Employment and Social Development

Applicant

and

B. O.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: August 10, 2017

REASONS AND DECISION

INTRODUCTION

[1] On September 6, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) allowed the Respondent's appeal of a decision by the Minister of Employment and Social Development (Applicant). The Respondent had been denied benefits on a claim for a disability pension under the *Canada Pension Plan* (CPP). The Applicant appealed to the Tribunal's General Division.

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

- a) the Respondent had a "severe" and "prolonged" disability in May 2013; and
- b) payments of CPP benefits start as of September 2013.

[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 December 1, 2016, within the 90-day time limit.

[5] The Applicant had also requested, on November 8, 2016, that the General Division issue a corrigendum of its decision to correct the deemed date of disability to January 2013 and payments to start in May 2013.

[6] On November 9, 2016, the General Division issued a corrigendum correcting the following:

- a) The Applicant is deemed disabled in January 2013.
- b) Payments of CPP benefits start in May 2013.

ISSUE

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

LAW AND ANALYSIS

[8] 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.

[9] 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.”

[10] 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.”

[11] 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.

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

- a) The Respondent needed to demonstrate that she had had a severe and prolonged disability on or before December 31, 2012 or in April 2013—her prorated date.
- b) The General Division found that the Respondent had been disabled with an onset date of May 2013, which is post-MQP.
- c) The Applicant does not dispute that the Respondent qualifies for CPP disability benefits.

- d) The evidence supports an onset date of October 2012.
- e) She applied for CPP benefits only in April 2014.
- f) Her deemed date of onset should be January 2013, and payment should commence in May 2013.

[13] The General Division issued a corrigendum on November 9, 2016. The corrected decision found the Applicant deemed disabled in January 2013 and payments to commence in May 2013.

[14] Therefore, the Application is moot.

CONCLUSION

[15] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division