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

Citation: *S. M. v. Minister of Employment and Social Development,* 2017 SSTADIS 399

Tribunal File Number: AD-16-1306

BETWEEN:

S. M.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: August 8, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On August 9, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that the Tribunal does not have jurisdiction to reopen the issues under the *Canada Pension Plan* (CPP) that were decided by the Office of the Commissioner of Review Tribunals (OCRT) in a 2004 decision.

[2] The Applicant filed an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on November 22, 2016.

[3] The Application was completed on November 24, 2016, and, therefore, it was not filed within the time limit for appeal to the Appeal Division.

ISSUES

[4] In order for the Application to be considered, an extension of time to apply for leave to appeal must be granted.

[5] In order to succeed on this Application for leave to appeal, the Applicant must show that the appeal has a reasonable chance of success.

THE LAW

[6] Pursuant to subsections 57(1) and (2) of the *Department of Employment and Social Development Act* (DESD Act), an application for leave to appeal must be made to the Appeal Division within 90 days after the day on which the decision appealed from was communicated to the appellant. Moreover, "The Appeal Division may allow further time within which an application for leave is to be made, but in no case may an application be made more than one year after the day on which the decision is communicated to the appellant."

[7] 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."

[8] 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.”

[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 submits the following reasons for the delay in completing his Application:

a) He has a lack of confidence in the appeal process.

b) The medical file is “corrupted.”

[11] The Applicant’s reasons for appeal can be summarized as follows:

a) There was a lack of cooperation from social services.

b) He attempted to file a CPP application in 1965 and made another request in 1996.

c) His file was corrupted, and the people responsible should be in jail.

d) “The law has been broken.”

ANALYSIS

Late Application

[12] The Applicant was late in filing his Application with the Appeal Division. He has provided reasons for his delay. However, his reasons do not explain the delay.

[13] The Applicant has not provided a reasonable explanation for the delay between the end of the appeal period and November 24, 2016 (the date on which the Application was completed).

[14] However, in *Canada (Attorney General) v. Larkman*, 2012 FCA 204, the Federal Court of Appeal held that, when determining whether to allow an extension of time, the overriding consideration is that the interests of justice be served.

[15] Therefore, I will consider whether the appeal has a reasonable chance of success.

Reasonable Chance of Success

[16] The Applicant applied for a disability pension in November 2012, but the Respondent refused that application. The Respondent's decision letter explained that both the Respondent and the OCRT had denied his previous application, filed in January 1998, and that the Respondent could not change that decision.

[17] The Applicant's 1998 CPP application was determined to have not met the rules to qualify for disability benefits as of December 1995 (his minimum qualifying period or MQP). The Applicant had not appealed the 2004 OCRT decision.

[18] The Applicant requested a reconsideration of the Respondent's decision on his November 2012 application, in May 2013, and the reconsideration decision of August 2013 maintained the initial decision.

[19] The Applicant appealed that decision to the Tribunal's General Division.

[20] The General Division had initially decided to proceed by way of a teleconference hearing scheduled in February 2016, but Applicant requested adjournments. The hearing was conducted on July 29, 2016. The Applicant participated in the hearing, and the Respondent did not.

[21] The issue before the General Division was, in light of the 2004 decision of the OCRT, whether the Tribunal had jurisdiction to address the appeal. The General Division needed to determine whether the principles of *res judicata* prevented the rehearing of the issue of whether the Applicant had a severe disability at or before his MQP.

[22] The General Division reviewed the Applicant's evidence and the parties' submissions. It rendered a written decision that is understandable, sufficiently detailed and logically coherent. The General Division weighed the evidence and gave reasons for its analysis of the evidence and the law. These are the General Division's proper roles.

[23] The Applicant argues that "[t]he law is broken."

[24] The issue that the General Division determined was not whether the Applicant had had a severe and prolonged disability on or before his MQP. It was whether the matter was *res judicata* and, having determined that it was, the General Division concluded that it could not proceed with an analysis on whether the Applicant had had a severe and prolonged disability on or before his MQP.

[25] The General Division referred to the jurisprudence applicable to the doctrine of *res judicata*. It correctly stated the doctrine and considered the facts of this matter in applying the doctrine.

[26] The General Division applied *Danyluk v. Ainsworth Technologies Inc.*, [2001] 2 SCR 460, 2001 SCC 44, and concluded that "[t]he conditions that give rise to the principles of *res judicata* exist in this case." It went on to consider factors that might affect the application of the doctrine of *res judicata* to the present appeal and concluded that "[t]here are no special circumstances such as those considered in *Danyluk* that would cause an injustice if I apply the doctrine of *res judicata* to this appeal."

[27] The Applicant has not articulated any error on the General Division's part as described in subsection 58(1) of the DESD Act.

[28] If leave to appeal is granted, then the Appeal Division's role is to determine whether the General Division made a reviewable error set out in subsection 58(1) of the DESD Act and, if

so, to provide a remedy for that error. In the absence of such a reviewable error, the law does not permit the Appeal Division to intervene. The Appeal Division's role is not to rehear the case *de novo*. It is in this context that the Appeal Division must determine, at the leave to appeal stage, whether the appeal has a reasonable chance of success.

[29] I have read and carefully considered the General Division's decision and the record. There is no suggestion that the General Division failed to observe a principle of natural justice or that it otherwise acted beyond or refused to exercise its jurisdiction in coming to its decision. The Applicant has not identified any errors in law or any erroneous findings of fact that the General Division, it in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it.

[30] I am satisfied that the appeal has no reasonable chance of success.

CONCLUSION

[31] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division