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

[TRANSLATION]

Citation: *J. N. v. Minister of Employment and Social Development,* 2017 SSTADIS 412

Tribunal File Number: AD-16-1352

BETWEEN:

J. N.

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 16, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On October 31, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) dismissed the Applicant's appeal. The General Division had determined the following:

a) The minimum qualifying period (MQP) ended on December 31, 2003.

b) The Applicant [translation] "may be able to work in a job suitable to his limitations or retrain for another position" and "the medical evidence indicates that his condition [...] should allow him to work in some capacity." That said, he did not attempt to look for another job that was better suited to his limitations and [translation] "it is impossible to determine that his medical condition would prevent him from working."

c) The Applicant does not have [translation] "a severe disability that renders him incapable regularly of pursuing any substantially gainful occupation on or before December 31, 2003, and that continues to this day."

File Background

[2] The Applicant applied for a disability pension in May 2011. The MQP ended on December 31, 2003.

[3] The Respondent denied his application initially and on reconsideration, and the Applicant appealed the reconsideration decision before the Tribunal's General Division in January 2014.

[4] A teleconference hearing was held on September 21, 2016. The Applicant attended the hearing. The Respondent did not attend the hearing, but filed written submissions. The Tribunal's General Division rendered a decision on October 31, 2016.

[5] The Applicant filed an application for leave to appeal to the Appeal Division on December 7, 2016.

ISSUE

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

LAW AND ANALYSIS

[7] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESDA), "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 DESDA provides that "[l]eave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success."

[9] According to subsection 58(1) of the DESDA, 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.

[10] The Tribunal will grant leave to appeal if it is satisfied that the Applicant has demonstrated that at least one of the grounds of appeal falls within the aforementioned grounds of appeal and that at least one of those grounds of appeal has a reasonable chance of success.

[11] This means that the Tribunal must be in a position to determine, in accordance with subsection 58(1) of the DESDA, whether there is a question of law, fact or jurisdiction, or relating to a principle of natural justice, the response to which might justify setting aside the decision under review.

[12] The Applicant made no reference to subsection 58(1) of the DESDA in outlining his grounds for appeal. According to his reasons for appeal, the Applicant submits that he could no longer work as of June 2001 and that he would prefer to speak face-to-face rather than over the telephone during the hearing before the General Division.

[13] Specifically, the Applicant notes that he is nervous and cannot express himself over the telephone. Furthermore, he could no longer do the work that the decision indicated that he had refused.

[14] It is not up to the member of the Appeal Division who has to determine whether to grant leave to appeal to clarify the grounds of appeal or to reweigh and reassess the evidence submitted before the General Division. From my reading of the appeal file and the General Division decision, most of the reasons that the Applicant has raised in his application were already advanced before the General Division.

[15] Mere repetition of the arguments already made before the General Division is not sufficient to show that the appeal has a reasonable chance of success on one of the aforementioned grounds of appeal.

[16] An appeal to the Appel Division is not a hearing on the merits of the Applicant's disability claim.

[17] The General Division had to determine whether it was likely that the Applicant had a severe and prolonged disability on or before December 31, 2003.

[18] In their decision, the General Division member found that:

a) A report from Dr. Frenette from December 2001, which stated that once the Applicant's symptoms were under control, he could attempt a gradual return to work (paragraph 11);

b) A general assessment of work capacity from January 2002, which concluded that the Applicant had shown capacity to safely carry out sedentary and light work (paragraphs 12 and 21);

c) A letter dated August 2003 from the Applicant's employment counsellor, which noted that the Applicant had refused to meet with an employer for an interview, even if he was qualified for the position, because the Applicant preferred to go back to school (paragraphs 13 and 20);

d) The medical evidence also indicates that the Applicant's status should allow him to work in some capacity (paragraph 27);

e) The Tribunal must determine whether the Applicant has shown that his efforts to obtain and maintain employment were unsuccessful due to his health condition;

f) The Applicant did not demonstrate that his health condition [translation] "would prevent him from work."

[19] For these reasons, the General Division found that the Applicant did not have a severe disability that has rendered him regularly incapable of holding substantially gainful employment either on or before December 31, 2003, and that continues to this day.

[20] Furthermore, in the General Division's decision, the member cited *Villani v. Canada (Attorney General)*, 2001 FCA 248; *Inclima v. Canada (Attorney General)*, 2003 FCA 117; and *Canada (Minister of Human Resources Development) v. Rice*, 2002 FCA 47, among the Federal Court of Appeal decisions that the General Division is bound to.

[21] The General Division decision refers to the sections of the *Canada Pension Plan* and to the jurisprudence relevant to a request for reconsideration. The General Division applied the law to the Applicant's situation. The decision does not contain an error in law. The General Division did not base 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. The Applicant submits that the General Division did not fail to observe a principle of natural justice or act beyond or refuse to exercise its discretion.

[22] For these reasons, the appeal has no reasonable chance of success.

CONCLUSION

[23] Leave to appeal is refused.

Shu-Tai Cheng
Member, Appeal Division