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

Citation: *D. E. v. Minister of Employment and Social Development*, 2017 SSTADIS 425

Tribunal File Number: AD-16-1377

BETWEEN:

D. E.

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 21, 2017

REASONS AND DECISION

INTRODUCTION

[1] On October 24, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that that a disability pension under the *Canada Pension Plan* (CPP) was not payable to the Applicant.

[2] The Applicant submitted an application for leave to appeal (Application) on December 16, 2016.

ISSUE

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

THE LAW

[4] 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."

[5] 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."

[6] 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."

[7] 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

[8] The Applicant's reasons for appeal can be summarized as follows:

a) He believes that with the information in the file and because he is still being treated and not able to work, his application for a disability pension should be approved.

b) During the hearing before the General Division, the member needed to take a break and he believes that "[w]e both lost our concentration."

ANALYSIS

[9] The Applicant had applied for a CPP disability pension in April 2014. The Respondent denied the application initially and on reconsideration, on the basis that, although the Applicant had limitations, the information had not shown that his limitations would have continuously prevented him from doing some type of work in February 2014 and since that time.

[10] The Applicant's minimum qualifying period (MQP) ended on February 28, 2014.

[11] The Applicant appealed that decision to the Tribunal's General Division. The General Division decided the appeal after conducting a teleconference hearing. The Applicant attended the hearing and gave evidence. The Respondent was not present at the hearing but had filed written submissions.

[12] The issue before the General Division was whether the Applicant had had a severe and prolonged disability on or before the date of the MQP.

[13] The General Division reviewed the evidence and the parties' submissions. It rendered a written decision that was understandable, sufficiently detailed and that provided a logical basis

for the decision. 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.

[14] The General Division stated the correct legislative basis and legal tests. It found that the Applicant had not had a severe disability that rendered him incapable regularly of pursuing any substantially gainful occupation on or before February 28, 2014, that continues to this day.

[15] For the most part, the Application repeats the Applicant's submissions before the General Division (that he is disabled and cannot work). A repetition of the arguments made before the General Division is not enough to establish that there are grounds of appeal to the Appeal Division.

[16] As to the Applicant's argument that the General Division member lost her concentration during the hearing because she "had to go answer the door," to the extent that these statements are allegations that he was denied the right to fully present his case, I will briefly discuss the natural justice issue.

[17] An appellant has the right to expect a fair hearing with a full opportunity to present his or her case before an impartial decision-maker: *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817, 1999 CanLII 699 (SCC), at paras 21 and 22. In *Arthur* v. *Canada (Attorney General)*, 2001 FCA 223, the Federal Court of Appeal stated that an allegation of prejudice or bias of a tribunal is a serious allegation. It cannot rest on mere suspicion, pure conjecture, insinuations or mere impressions of the applicant. It must be supported by material evidence demonstrating conduct that derogates from the standard. The duty to act fairly has two components: the right to be heard and the right to an impartial hearing.

[18] Even with the Applicant's arguments at face value, the evidence falls short of showing that the General Division did not give the Applicant sufficient opportunity to be heard or that the General Division was prejudiced or biased. While the Applicant may have thought that taking a break during the General Division hearing was problematic, the evidence does not demonstrate that the General Division's conduct derogated from the standards of the right to be heard and the right to an impartial hearing.

[19] Once leave to appeal has been granted, the Appeal Division's role is to determine whether the General Division has 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. It is not the Appeal Division's role 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.

[20] I have read and carefully considered the General Division 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, in coming to its decision, may have made in a perverse or capricious manner or without regard for the material before it.

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

CONCLUSION

[22] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division