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

Citation: *J. C. v. Minister of Employment and Social Development*, 2017 SSTADIS 458

Tribunal File Number: AD-16-1330

BETWEEN:

J. C.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: September 19, 2017

REASONS AND DECISION

OVERVIEW

[1] At its core, this case is about whether the Applicant is entitled to greater retroactive payments of a Canada Pension Plan disability pension. In a decision rendered on August 26, 2016, the General Division upheld an earlier determination that the earliest that payments could begin were four months after the Applicant's deemed date of disability, based on his most recent application for a disability pension, made in November 2012. The Applicant seeks leave to appeal the General Division's decision. He seeks to have retroactive payments made based on the date of his first application for a disability pension in 2001, or based on the date of onset of his disability in August 1997.

ISSUE

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

ANALYSIS

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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.

[4] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the

appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300

(a) Constitutional issues

[5] The General Division provided a succinct summary of the history of proceedings of this matter. As the General Division indicated, the Appeal Division previously heard an appeal in this matter. I allowed the appeal at that time to provide the Applicant with an opportunity to properly advance any constitutional issues he might have had. I see now that the Applicant did not pursue such claims. As the General Division noted, the Applicant did "not […] provide coherent notice that named whatever provision might be at issue in a constitutional challenge, nor did he provide even the briefest submission in support." As such, the General Division determined that he had not raised a constitutional issue as required by the *Social Security Tribunal Regulations* (Regulations). The Tribunal notified the parties of this decision and that the appeal would proceed without any consideration of any constitutional issues.

[6] The Applicant is again attempting to raise constitutional issues, although he does not contest or challenge the General Division's determination that he was precluded from advancing any constitutional arguments because he had not properly raised them nor given notice in compliance with the Regulations.

[7] I see no basis to find any error on the part of the General Division in proceeding to hear the appeal without any consideration of any constitutional issues. The Applicant took no steps to give notice under the Regulations: he neither filed a notice with the Tribunal that set out the provision at issue and that contained any submissions in support of the issue that he proposed to raise, nor did he serve notice on the persons referred to in subsection 57(1) of the *Federal Courts Act* and filed a copy of the notice and proof of service with the Tribunal.

[8] The Applicant cannot now resurrect any constitutional arguments, particularly so in the absence of any credible evidentiary foundation. The Applicant forfeited any opportunity to advance any constitutional arguments, having chosen not to actively pursue them at the appropriate juncture.

(b) Other issues

[9] The Applicant has not raised any readily identifiable grounds of appeal under subsection 58(1) of the DESDA, although one can infer that he is either suggesting that the General Division overlooked some of the medical evidence, or suggesting that I should conduct my own assessment of the medical evidence. After all, the Applicant urges me to conduct a thorough review of the medical information and of prior decisions of both the General and Appeal Divisions.

[10] The Applicant has reviewed some of the medical opinions and records. He claims that the medical evidence supports a conclusion that he has been severely and permanently disabled since August 21, 1997 (ADN1-33).

[11] Subsection 58(1) provides for only limited grounds of appeal. It does not allow for a reassessment or rehearing of the evidence: *Tracey*, *supra*.

[12] This leaves me to consider whether the General Division might have erred when it did not review the medical evidence before it. The General Division determined that paragraph 42(2)(*b*) and section 69 of the *Canada Pension Plan* are definitive and that they applied, irrespective of when the Applicant "may have actually met the definitive of 'severe and prolonged'." In other words, the General Division found that, as a disability pension had already been awarded to the Applicant, it did not have to consider the medical evidence for the purposes of determining when payment of a disability pension should have commenced, as the commencement date of payment had to be based on his deemed date of disability. The General Division determined that the deemed date of disability in turn was based on when the Applicant had made his most recent application for a disability pension[1].

[1] There was no evidence or any suggestion that the Applicant might have been incapacitated, as defined by the *Canada Pension Plan.*

[13] The General Division determined that it had no authority to backdate an award beyond the statutory maximum of 15 months, from the time of the Applicant's most recent application. The General Division held that its jurisdiction was limited to reviewing only the Respondent's reconsideration decision, relating to the Applicant's 2012 application, and that it did not have any jurisdiction to make a decision on the 2001 application. Had it determined that payment of a disability pension could be based on the 2001 application, effectively this would have amounted to reversing the Respondent's 2001 decision. This would have been inappropriate.

[14] Had the General Division determined that commencement of payment of a disability pension could be based on the Applicant's 2001 application, it would have been overstepping its jurisdiction. This is so, as the Applicant had not sought a reconsideration of the Respondent's decision denying his initial application for a disability pension. The Applicant appealed the Respondent's reconsideration decision relating to his 2012 application, so the General Division was necessarily restricted to considering only the Respondent's reconsideration decision relating to his 2012 application.

[15] The Applicant has not provided any discernible legal or other bases upon which the General Division is alleged to have erred when it used his 2012 application to determine the deemed date of disability.

[16] The provisions of the *Canada Pension Plan* clearly set out when payment of a disability pension commences. The General Division properly applied these provisions. I am not satisfied that there is an arguable case or that the appeal has a reasonable chance of success on the issue of whether the General Division erred in deciding when payment of a disability pension would commence.

[17] Finally, I note that the Applicant has raised several grievances—primarily against the Respondent—but these do not address any of the grounds of appeal under subsection 58(1) and are therefore beyond my purview.

CONCLUSION

[18] I am not satisfied that the appeal has a reasonable chance of success on any of the issues that the Applicant has raised. This application is therefore refused.

Janet Lew
Member, Appeal Division