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

Citation: *M. P. v. Minister of Employment and Social Development,* 2017 SSTADIS 503

Tribunal File Number: AD-17-164

BETWEEN:

M. P.

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: September 29, 2017

REASONS AND DECISION

INTRODUCTION

[1] On December 30, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* (CPP) was not payable to the Applicant.

[2] The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on February 20, 2017.

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

a) 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.

b) The General Division did not respect medical reports dated November 10, 2014 (LeBlanc), and July 28, 2016 (Smith).

c) The General Division did not take into account the following evidence:

    1. She has not been looking for work because she is not capable of working.

    2. There are many days when she is not functional.

    3. The Functional Capacity Evaluation was a waste of time.

d) The General Division should have accepted her doctors' evidence.

ISSUE

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

THE LAW

[5] 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."

[6] 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."

[7] 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."

[8] 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.

ANALYSIS

[9] The Applicant had applied for a disability pension in January 2014. The Respondent denied the application initially and upon reconsideration on the basis that, while the Applicant had certain restrictions due to her medical condition, the information did not show that those limitations prevented her from doing some type of work.

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

[11] The issue before the General Division was whether the Applicant had had a severe and prolonged disability on or before December 31, 2015, which was the end of her minimum qualifying period.

[12] The Application submitted to the Appeal Division argues that the Applicant is disabled, and that the General Division "did not respect" evidence and information in the file. She referred to two medical reports.

[13] The letter from Dr. LeBlanc, dated November 10, 2014, was referenced in the General Division decision at paragraph 14. The report of Dr. D. Smith was also referenced, at paragraph 15.

[14] The Applicant argues that Dr. LeBlanc stated that she was incapable of all types of work, including sedentary.

[15] The General Division also considered a Functional Capacity Evaluation, which concluded, in September 2014, that the Applicant should be able to return to the workforce in a gradual manner and improve her overall condition while at work in a sedentary position.

[16] The "Analysis" section of the General Division decision includes one paragraph explaining the member's findings:

> [19] The Appellant was 57 years old at the time of her MQP, with extensive education and work experience. A Functional Capacity Evaluation from September 2014 indicated that the Appellant would be capable of working in a sedentary position. The Appellant noted that there are very few well-paying jobs in her area. While her family doctor supports her application, the remaining medical evidence demonstrates a capacity to work. Also, her treatments have been very conservative and there are further treatment options that have not been exhausted yet. She also testified that while she is incapable of doing heavy chores, she can still do lighter duty tasks.

[17] In *Oberde Bellefleur OP Clinique dentaire O. Bellefleur (Employer) v. Canada (Attorney General)*, 2008 FCA 13, the Federal Court of Appeal cautioned that if a board (or tribunal) decides that contradictory evidence should be dismissed or assigned little or no weight at all, it must explain the reasons for its decision. Failing to do so presents a risk that its decision will be marred by an error of law or that it will be qualified as capricious.

[18] Dr. Leblanc's opinion of November 2014 certainly appears to contradict the Functional Capacity Evaluation of September 2014. The General Division's explanation for giving little or no weight to Dr. Leblanc's opinion is: "While her family doctor supports her application, the remaining medical evidence demonstrates a capacity to work." The only medical evidence referred to in the decision is the reports of Dr. LeBlanc and Dr. Smith, and the Functional Capacity Evaluation.

[19] In *Page v. Workplace Health, Safety and Compensation Commission of New Brunswick*, 2006 NBCA 95, Turnbull J.A., in partial dissent, examined the issue of the sufficiency of reasons, in reviewing the decision of the Appeals Tribunal established under that province's Workplace Health, Safety and Compensation Commission Act, S.N.B. 1994, c. W-14.

[20] The Supreme Court of Canada, in *R. v. Sheppard*, 2002 SCC 26, [2002] 1 SCR 869, stated that one of the purposes of written reasons is to explain to parties why the decision was made. This purpose cannot be achieved without some explanation of how the evidence was assessed and weighed.

[21] In *R. v. R.E.M.*, 2008 SCC 51, [2008] 3 SCR 3, the Supreme Court of Canada referred to *Sheppard*, *supra*, and a number of other cases and confirmed the principles relating to sufficiency of reasons, as follows:

a) Appellate courts are to take a functional, substantive approach to sufficiency of reasons, reading them as a whole, in the context of the evidence, the arguments and the trial, with an appreciation of the purposes or functions for which they are delivered;

b) The basis for the trier of fact's decision must be "intelligible," or capable of being made out. In other words, a logical connection between the decision and the basis for the decision must be apparent. A detailed description of the trier of fact's process in arriving at the decision is unnecessary.

c) In determining whether the logical connection between the decision and the basis for the decision is established, one looks to the evidence, the submissions of counsel and the history of the trial to determine the "live" issues as they emerged during the trial.

d) The question is whether the reasons, viewed in light of the record and submissions on the live issues presented by the case, explain why the decision was reached, by establishing a logical connection between the evidence and the law on the one hand and the decision on the other.

e) The degree of detail required depends on the circumstances. Less detailed reasons may be required in cases where the basis of the decision is apparent from the record; more detail may be required where the trier of fact is called upon "to address troublesome principles of unsettled law, or to resolve confused and contradictory evidence on a key issue."

f) To justify intervention, there must be a functional failing in the reasons. More precisely, the reasons, read in the context of the evidentiary record and the live issues on which the trial focused, must fail to disclose an intelligible basis for the decision, capable of permitting meaningful appellate review.

[22] The General Division's analysis of the "severe" issue comprises seven paragraphs. Five of them state principles taken from Federal Court of Appeal jurisprudence and the last one is the conclusion. There is one paragraph that explains the member's decision, and there is one sentence that explains the contradictory medical evidence. Does this adequately meet the principles relating to sufficiency of reasons?

[23] I find that whether the General Division, in its explanation of the contradictory evidence, failed to disclose an intelligible basis for its decision capable of permitting meaningful review, warrants further review.

[24] The appeal has a reasonable chance of success based on a possible error of law.

CONCLUSION

[25] The Application is granted pursuant to paragraph 58(1)*(b)* of the DESD Act.

[26] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Shu-Tai Cheng
Member, Appeal Division