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

Citation: *M. T. v. Minister of Employment and Social Development,* 2017 SSTADIS 516

Tribunal File Number: AD-17-4

BETWEEN:

M. T.

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: October 4, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On October 27, 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 December 28, 2016.

[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 erred in:

   1. Paragraph 48: the statement that the Applicant's children are/were her stress;

   2. Paragraph 52: Home Hardware had no positions that could accommodate the Applicant's limitations;

   3. Paragraph 57: failing to assess the severe criterion in a real-world context;

   4. Paragraph 38: Dr. Nault provided her opinion and reasons for forming that opinion; if the Tribunal needed clarification, it should have asked Dr. Nault for it;

   5. Paragraph 50: using the adjudicative framework would result in a finding that the Applicant's disability is severe; the Tribunal should have asked Dr. Nault for clarification;

   6. Not accepting the Applicant's testimony.

c) The General Division should have accepted Dr. Nault's opinion that the Applicant is "indefinitely permanently disabled with no likelihood of returning to workforce at any job."

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 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 May 2015. The Respondent refused 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, 2016, which was the end of her minimum qualifying period.

[12] The General Division reviewed the evidence and the parties' submissions. It rendered a written decision that was understandable, that was 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, as well as of the law. These are the General Division's proper roles.

[13] The Application submitted to the Appeal Division argues that the Applicant is disabled, and that the General Division misconstrued evidence and information in the file.

[14] For the most part, the Application repeats the Applicant's submissions before the General Division (that she is disabled and cannot work, and that the Respondent should have accepted Dr. Nault's opinion).

[15] Dr. Nault, a family physician, is the physician who completed the Applicant's CPP Medical Report, dated March 9, 2015. This is also the physician who authored most of the reports in the appeal record.

[16] The Applicant argues that the General Division should have decided her case based on the medical reports of her family physician and, if any clarification was needed, it should have

sked Dr. Nault for further information. The Applicant points to Dr. Nault's November 24, 2015, letter, which was written in response to the Respondent's request.

[17] Neither the Respondent nor the Tribunal has a responsibility to seek clarification on a claimant's medical condition. The onus is on the claimant to demonstrate that he or she has a severe and prolonged disability as defined in the CPP.

[18] The Applicant's ground of appeal that the Respondent and the Tribunal neglected to request clarification from her family physician does not have a reasonable chance of success.

[19] The General Division did not simply accept this physician's opinion that the Applicant is permanently disabled and has no likelihood of returning to the workforce. It would have been an error if the General Division had simply accepted the opinion. Instead, it considered the opinion of the Applicant's family physician, and it explained its reasons for assigning that opinion the weight that it did. The General Division did not err in so doing.

[20] As to the specific factual errors that the Applicant has alleged:

a) Paragraph 48: the statement that the Applicant's children are/were her stress—the General Division stated that the Applicant's children "contribute to her stress"; at paragraph 47, the Applicant's inability to give her children more care than she is able to was noted. These findings were not "made in a perverse or capricious manner or without regard for the material before it."

b) Paragraph 52: the Applicant's explanation is that Home Hardware had no positions that could accommodate the Applicant's limitations. The finding that "there is no corroborating evidence" was not an error at the time of the hearing. At paragraph 53 and 54, the General Division assessed the Applicant's attempts to obtain and maintain a job within her limitations.

c) Paragraph 57: the General Division did not fail to assess the severe criterion in a real-world context; it considered her age, level of education, language proficiency, and past work and life experience.

d) Paragraphs 38 and 50: Dr. Nault provided her opinion and reasons for forming that opinion; if the Tribunal needed clarification, it should have asked Dr. Nault for it. This argument was discussed in the preceding paragraphs of this decision.

e) Not accepting the Applicant's testimony: The General Division summarized the Applicant's testimony at the hearing (paragraphs 9 to 24). It considered this testimony and the medical evidence on file in its analysis of the issues.

[21] 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.

[22] 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.

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

CONCLUSION

[24] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division