



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. D. v. Minister of Employment and Social Development*, 2017 SSTADIS 543

Tribunal File Number: AD-17-104

BETWEEN:

B. D.

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 23, 2017

REASONS AND DECISION

DECISION

[1] The application for leave to appeal (Application) is refused.

OVERVIEW

[2] The Applicant, B. D., seeks a disability pension under the *Canada Pension Plan* (CPP). The Respondent, the Minister of Employment and Social Development, denied her request, because 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.

[3] The Applicant maintains that post-traumatic stress disorder, anxiety, panic attacks, obsessive-compulsive disorder, social phobia and postponed knee surgery prevent her from working. She last worked regularly in 2003, and between 2003 and 2009, she attempted to work (casual, part-time) without success.

[4] The Applicant must establish a severe and prolonged disability before the end of her minimum qualifying period (MQP) of December 31, 2003, to qualify for a CPP disability pension.

[5] The General Division found that there was no medical evidence describing the Applicant's medical conditions or their effect on her ability to work in or around 2003. Therefore, the Applicant did not demonstrate that her disability was severe and prolonged by the end of her MQP.

[6] The Applicant filed an Application to the Appeal Division of the Social Security Tribunal of Canada (Tribunal).

ISSUES

[7] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?¹

[8] More specifically, is there a reasonable argument that the General Division based its decision on erroneous findings of fact because it failed to confirm that the Applicant's medical issues started in childhood and continued throughout the qualifying period and because it failed to contact her medical personnel?

ANALYSIS

[9] An appeal to the Appeal Division may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.²

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it 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.

[11] The Applicant's primary ground of appeal is that 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. The Applicant submits that she has suffered from medical issues since childhood and that they were present throughout her qualification period. She argues that the General Division did not consider this and did not contact her "medical personnel."

¹ *Osaj v. Canada (Attorney General)*, 2016 FC 115 at paragraph 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208 at paragraph 36; *Glover v. Canada (Attorney General)*, 2017 FC 391 at paragraph 22.

² *Department of Employment and Social Development Act* (DESD Act) at subsections 56(1) and 58(3).

³ DESD Act at subsection 58(1).

⁴ DESD Act at subsection 58(2).

[12] The Applicant last met the contributory requirements under the CPP on December 31, 2003 (her MQP). This means that she needs to have had a severe and prolonged disability on or before that date in order to be eligible for a CPP disability pension.⁵ The terms “severe” and “prolonged” are defined in the CPP and have been interpreted extensively in the jurisprudence.

Childhood Issues

[13] I note that the General Division did state that the Applicant had medical issues earlier in her life. Its decision mentions that the Applicant had reported childhood issues to physicians who wrote reports in 2011 to 2016.⁶ Some of these reports note “chronic” anxiety and depression or “continues” in treatment and with therapy.⁷ However, none of these physicians knew the Applicant during or around the 2003 MQP, and they were unable to speak to her condition and its impact on her capacity to work around that time.

[14] In addition, the Applicant did not attend the General Division hearing and, thereby, did not give oral evidence. The General Division’s role includes weighing the evidence in the record. In this case, the evidence in the record included only documentary evidence in the form of medical reports prepared long after the MQP and these reports did not address the Applicant’s disability during or around the MQP.

[15] The Applicant submits that the General Division made a serious error in its findings of fact by failing to conclude that she suffered from medical issues since childhood through to 2003 (which continue to the present). Her submissions suggest that if the General Division had made this finding, then it would have concluded that her disability was severe and prolonged in 2003.

[16] This argument does not have a reasonable chance of success. The Applicant reported childhood issues to physicians, but the General Division could not conclude anything more based on the evidence in the record.

Contacting Medical Professionals

[17] The Applicant argues that “no medical personnel were never [*sic*] contacted regarding her claim” and because of this, the General Division made serious errors in its findings of fact.

⁵ CPP at paragraph 42(2)(a).

⁶ General Division decision at paragraphs 12 and 15.

⁷ General Division decision at paragraphs 12 and 18.

[18] 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 they have a severe and prolonged disability as defined in the CPP. It is the Applicant's responsibility to adduce the evidence and arguments required to prove that she had a severe and prolonged disability and not the Respondent's responsibility to disprove that she did. Therefore, this argument does not have a reasonable chance of success.

[19] I have read and considered the General Division decision and the documentary 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. My review does not indicate that the General Division either overlooked or misconstrued important evidence.

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

CONCLUSION

[21] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division