



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. D. v. Minister of Employment and Social Development*, 2017 SSTADIS 553

Tribunal File Number: AD-16-1237

BETWEEN:

M. 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 25, 2017

REASONS AND DECISION

DECISION

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

OVERVIEW

[2] The Applicant, M. D., seeks a disability pension under the *Canada Pension Plan* (CPP). He claims that pain in his back, neck, hips and shoulders, and inflammatory bowels prevent him from working. He last worked regularly in 2013 and, since then, has not attempted any kind of work.

[3] The Respondent, the Minister of Employment and Social Development, denied his request, because while the Applicant had certain restrictions due to his medical condition and may not have been able to work at the time of his application, treatment for his condition should improve his function so that he can return to some type of work in the foreseeable future.

[4] The Applicant appealed the Respondent's denial of a CPP disability pension to the General Division of the Social Security Tribunal of Canada (Tribunal). The General Division found that the Applicant's disability was not severe before the end of his minimum qualifying period, because he is able to seek employment or retrain within his limitations and treatments are improving his symptoms. Its decision states that the Applicant "is very young" and refers to his age repeatedly.

[5] I find that Applicant has put forward an arguable case that the General Division applied the CPP in a discriminatory manner by basing its decision on the Applicant's age, contrary to *Canadian Charter of Rights and Freedoms* (Charter) values.¹

¹ 1982 *Constitution Act*, which includes the *Canadian Charter of Rights and Freedoms* at section 15.

ISSUES

[6] 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?²

[7] More specifically, is there an argument that the General Division applied the criteria of “severe and prolonged” disability in a manner that violated the Applicant’s right to equality and, therefore, in a manner that was contrary to Charter values by its reliance on the Applicant’s age?

ANALYSIS

Is There an Arguable Ground Upon Which The Proposed Appeal Might Succeed?

[8] 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.³

[9] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success⁴ based on a reviewable error.⁵ 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.

[10] The Applicant submits that the General Division made many serious errors in its findings of fact and that it erred in law, and he provided arguments on each type of alleged error.

[11] Although the Applicant submitted numerous grounds of appeal, the Appeal Division need not address all the grounds of appeal raised. Where individual grounds of appeal are

² *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 363 at paragraph 22.

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

⁴ *DESD Act* at subsection 58(1).

⁵ *DESD Act* at subsection 58(2).

interrelated, it may be impracticable to parse the grounds. One arguable ground of appeal may suffice to justify granting leave to appeal.⁶ Therefore, I will address one possible error that warrants further review and not every alleged error.

Is There an Argument that the General Division Decision is Contrary to Charter Values?

[12] The Application refers to the Charter and alleges that the General Division's decision violated the Applicant's Charter rights, specifically, his right to life, liberty and security of the person and his equality rights.

[13] The Tribunal asked the Applicant whether these allegations were intended as a "notice of a constitutional issue." If they were, then the Applicant would be required to file and serve a notice of constitutional issue as required by the *Social Security Tribunal Regulations* and the *Federal Courts Act*.⁷

[14] The Applicant replied that he was not raising a notice of constitutional issue. He was arguing that "the Chair applied the Canadian Pension Plan in a discriminatory manner, contrary to Charter values. The applicant has no objection to the validity of the Canadian pension plan itself." His Application alleges that the General Division decision infringed on his equality rights and his right to life, liberty and security.

[15] This argument warrants further review because administrative decision-makers must strike an appropriate balance between Charter rights and the objectives of the legislation in question, to ensure that the rights are not unreasonably limited.⁸ This means that in determining whether an applicant has met the eligibility requirements under the CPP, the law should be applied in a manner consistent with Charter values.

[16] Although I find that this is an arguable ground upon which the proposed appeal might succeed, I also note that long-established jurisprudence states that the age of the applicant for CPP disability pension is a relevant factor.⁹ As such, this argument is by no means certain to succeed.

⁶ *Mette v. Canada (Attorney General)*, 2016 FCA 276.

⁷ Section 20 of the *Social Security Tribunal Regulations* and subsection 57(1) of the *Federal Courts Act*.

⁸ *Dore v. Barreau du Québec*, 2012 SCC 12.

⁹ Examples: *Villani v. Canada (Attorney General)*, 2001 FCA 248; *Murphy v. Canada (Attorney General)*, 2016 FC 1208.

[17] I am satisfied that the appeal has a reasonable chance of success on the basis of a possible error of law or failure to observe a principle of natural justice.

[18] The SST Regulations require parties to file written submissions.¹⁰ I ask that they include detailed written submissions on the Charter values issue. They may also make submissions on the other grounds of appeal raised by the Applicant and the form of hearing that is appropriate for this appeal.

CONCLUSION

[19] The Application is granted pursuant to paragraphs 58(1)(a) and (b) of the DESD Act.

[20] 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

¹⁰ SST Regulations at section 42.