



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *P. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 555

Tribunal File Number: AD-17-361

BETWEEN:

**P. P.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Kate Sellar

Date of Decision: October 25, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] On February 6, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was not payable because the Applicant did not show that he was incapable regularly of pursuing any gainful employment as of his minimum qualifying period (MQP), which ended on April 30, 2016. The General Division relied in part on “a substantial portion” of the medical evidence, which contemplated the Applicant’s return to work at some point. The General Division found that the Applicant had capacity to work, and that there was not sufficient evidence to support a conclusion that the Applicant was unsuccessful in obtaining and maintaining employment by reason of his health conditions.

[2] The Applicant filed an application for leave to appeal (Application) with the Tribunal’s Appeal Division on May 1, 2017.

### ISSUE

[3] The Appeal Division must decide whether the appeal has a reasonable chance of success.

### THE LAW

#### Leave to Appeal

[4] According to ss. 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESDA), an applicant may bring an appeal to the Appeal Division only if the Appeal Division grants leave to appeal. The Appeal Division must either grant or refuse leave to appeal.

[5] Subsection 58(2) of the DESDA provides that the Appeal Division refuses leave to appeal if it is satisfied that the appeal has no reasonable chance of success. An arguable case at law is a case with a reasonable chance of success [see *Fancy v. Canada (Attorney General)*, 2010 FCA 63].

## Grounds of Appeal

[6] According to s. 58(1) of the DESDA, the following are the only grounds of appeal:

(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.

## SUBMISSIONS

[7] The Applicant relies on ss. 58(1)(b) and 58(1)(c) of the DESDA, stating that the General Division erred in law in making its decision and in basing its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard to the material before it. Specifically, the Applicant argues, *inter alia*, that the General Division failed to consider the cumulative effect of his medical conditions as is required by law.

## ANALYSIS

[8] The Applicant seems to argue that the General Division failed to consider the totality of his impairments in assessing his capacity to work. The General Division is required to consider all the possible impairments, not just the biggest impairments or the main impairment [see *Bungay v. Canada (Attorney General)*, 2011 FCA 47, para. 8]. There is a reasonable chance of showing an error under s. 58(1)(b) of the DESDA in this matter as it appears that the General Division failed to consider the evidence relating to one of the Applicant's medical conditions.

[9] The Applicant lists a heart condition as one of his conditions in the Application, and the General Division acknowledged that the Applicant listed "right bundle branch block in heart" as one of his health-related conditions in his application for a disability pension in 2015 (para. 43). In the evidence section of its decision, the General Division noted that "[t]he Appellant testified that he is on medication for his right bundle branch block and he gets pains in his heart area. He

carries nitroglycerin and baby aspirin but that condition did not prevent him from doing his desk job” (para. 12). In its analysis, the General Division did not identify the heart condition as a medical basis on which the Applicant applied for a disability pension (see para. 74). In its analysis, the General Division considered other conditions, but there is no analysis relating to the impact of any heart condition on the Applicant.

[10] The General Division is presumed to have considered all the evidence before it, but that presumption will be set aside when the probative value of the evidence that is not expressly discussed is such that it should have been [see *Lee Villeneuve v. Canada (Attorney General)*, 2013 FC 498; *Kellar v. Canada (Minister of Human Resources Development)*, 2002 FCA 204; and *Litke v. Canada (Human Resources and Social Development)*, 2008 FCA 366].

[11] It is arguable that the General Division erred under s. 58(1)(c) of the DESDA in failing to consider the evidence about one of the Applicant’s medical conditions in the analysis, particularly given that the decision states that this heart condition was listed by the Applicant in his initial application for a disability pension in 2015. This is also arguably an error under s. 58(1)(b) of the DESDA, since the Federal Court of Appeal’s decision in *Bungay* requires the General Division to consider the cumulative impact of all the impairments.

[12] Given that the Appeal Division has identified a possible error under s. 58(1) of the DESDA, it does not need to consider any other grounds or arguments raised by the Applicant at this time. The DESDA s. 58(2) does not require that individual grounds of appeal be considered and accepted or rejected: *Mette v. Canada (Attorney General)*, 2016 FCA 276.

[13] However, the Appeal Division invites further submissions on the following statement in the Application: “The Appellant takes pain medication and antidepressants to control his conditions. The side effects of these medications include fatigue and dizziness, and the side effects were evidence prior to his MQP.”

[14] It is unclear whether the Applicant argues that the evidence about the side effects of his medications was before the General Division and the General Division ignored that evidence in error under s. 58(1)(c) of the DESDA, or whether the Applicant is providing this information

about side effects for the first time as evidence in his Application. The Applicant will be asked to clarify this submission on appeal.

## **CONCLUSION**

[15] The Application is granted. This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Kate Sellar  
Member, Appeal Division