



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *R. D. v. Minister of Employment and Social Development*, 2017 SSTADIS 556

Tribunal File Number: AD-17-90

BETWEEN:

R. D.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: October 25, 2017

REASONS AND DECISION

INTRODUCTION

[1] On November 25, 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. The General Division determined that the Applicant did not have a severe disability on or before the minimum qualifying period (MQP) date of December 31, 2007.

[2] The Applicant died on December 18, 2016. His spouse, R. D. (Applicant on appeal), filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on February 1, 2017. The Application included documentation to indicate that she is the executor of the Applicant's estate.

[3] In correspondence dated September 15, 2017, the Tribunal requested that the Applicant on appeal identify the reasons for the appeal and explain why the Application has a reasonable chance of success. The Tribunal gave the Applicant on appeal until October 5, 2017, to provide a response. The Tribunal did not receive a written response from the Applicant on appeal.

ISSUE

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

THE LAW

Leave to Appeal

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

[6] 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

[7] 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

[8] The Applicant on appeal submitted that she does not understand how the claim for the Applicant was dismissed. She stated that the Applicant was only seeking benefits beginning in November 2012, which should work in the Applicant's favour, not against him. She also noted that the Applicant worked until physicians advised him that he could no longer work at any job, at which time he followed orders and stopped working. Overall, the Applicant on appeal argued that the General Division decision was unfair to the Applicant because he worked for as long and as hard as he could to support his family, there is nothing wrong with that, and that should count for something.

ANALYSIS

[9] The Applicant on appeal has not relied expressly on any grounds under s. 58(1) of the DESDA, and she does not explain how the General Division erred in rendering its decision. The Applicant on appeal is unrepresented in these proceedings, and the Tribunal has provided her with an opportunity as outlined above to provide submissions in support of her Application [see *Bossé v. Canada (Attorney General)*, 2015 FC 1142]. She did not provide any further information in support of her Application.

[10] It is not the Appeal Division's role to hear the case *de novo* or to reweigh the evidence [see *Marcia v. Canada (Attorney General)*, 2016 FC 1367]. An appeal to the Appeal Division is not an opportunity to reargue the case and request a different outcome.

[11] The Applicant's arguments seem to be about whether the application of the MQP by the General Division resulted generally in a fair outcome for the Applicant. The Applicant has not raised an argument that fits within one of the required grounds of appeal under s. 58(1) of the DESDA.

[12] The Applicant bears the onus of providing all the evidence and arguments required under s. 58(1) of the DESDA [see *Tracey v. Canada (Attorney General)*, 2015 FC 1300]. However, the Appeal Division should go beyond a mechanistic review of the grounds of appeal [see *Karadeolian v. Canada (Attorney General)*, 2016 FC 615]. The Appeal Division examined the record and is satisfied that the General Division did not overlook or misconstrue the evidence.

[13] The General Division's decision found that the Applicant's MQP ended on December 31, 2007 (para. 6). This date is calculated based on the Applicant's contributions to the CPP. In order to be eligible to receive a disability pension, the General Division needed to find that the Applicant became disabled on or before his MQP date (para. 7). The Applicant applied for a disability pension in February 2014 (para. 1). The General Division acknowledged that the Applicant worked for many years past his MQP, and that he stopped working in November 2012 (para. 25). The Applicant claimed disability as of May 1, 2011 (after his MQP) (para. 22). The General Division concluded that there was no medical information for the period from 2005 to 2007 to support a severe disability as of his MQP date of December 31, 2007 (para. 27).

CONCLUSION

[14] The Application is refused.

Kate Sellar
Member, Appeal Division