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

Citation: *I. G. v. Minister of Employment and Social Development*, 2017 SSTADIS 577

Tribunal File Number: AD-17-613

BETWEEN:

I. G.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: October 30, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] On June 19, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a Canada Pension Plan disability pension was not payable. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on September 18, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operations. According to subsections 56(1) and 58(3) of DESD Act, 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] The only grounds of appeal available to the Appeal Division under the DESD Act 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.

[4] Subsection 58(2) of the DESD Act provides that leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[5] I must determine whether the Applicant has presented a ground of appeal under the DESD Act that may have a reasonable chance of success.

[6] The Applicant first put forward grounds of appeal with respect to the General Division's findings of fact. The Federal Court of Appeal has decided that the Tribunal is presumed to have considered all of the evidence before it, including testimony and written material. Each and every piece of evidence need not be mentioned in the written decision (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). Hence, the General Division did not err simply because the decision did not specifically refer to each piece of evidence that was presented.

[7] However, in this case, it appears that the General Division may not have considered the physiotherapy treatment that the Applicant received, as well as the various symptoms reported in notes made by the physiotherapist. This may have resulted in the decision being based on an erroneous finding of fact made without consideration of all the evidence that was before the General Division. This is a ground of appeal that may have a reasonable chance of success on appeal.

[8] In addition, the General Division decision did not consider what impact the Applicant's medication might have on her capacity to work or to retrain for an alternate job. This may also have led to erroneous findings of fact made without regard to all of the material that was before the General Division. This ground of appeal may also have a reasonable chance of success on appeal.

[9] The General Division decision may also contain an error of law. The minimum qualifying period was calculated to end on December 31, 2019. This may be correct. However, as the hearing of this matter was in June 2017, this date is in the future. It would be impossible for the Tribunal member to decide whether the Applicant was disabled as of a date in the future. Instead, the General Division should have decided whether the Applicant was disabled as of the hearing date. The General Division therefore appears to have applied the wrong legal test in this case. Leave to appeal is granted on this basis as well.

[10] Finally, in *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal indicated that it is not necessary for the Appeal Division to address all the grounds of appeal an Applicant raises. In that case, Dawson J.A. stated, in reference to subsection 58(2) of the DESD Act, that "[t]he provision does not require that individual grounds of appeal be dismissed." Because I found that some of the grounds of appeal have a reasonable chance of

success, I have not considered the remaining grounds of appeal that the Applicant has submitted. At the hearing of this appeal, the parties are not restricted to the grounds of appeal referenced in this decision.

CONCLUSION

[11] The Application is granted because the Applicant presented grounds of appeal that may have a reasonable chance of success on appeal.

[12] This decision to grant leave to appeal does not presume the result of the appeal on the merits of the case.

Valerie Hazlett Parker
Member, Appeal Division