



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 559

Tribunal File Number: AD-17-171

BETWEEN:

S. P.

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 26, 2017

REASONS AND DECISION

DECISION

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

OVERVIEW

[2] The Applicant, S. P., seeks a disability pension under the *Canada Pension Plan* (CPP). She maintains that constant pain due to a number of medical problems prevents her from working. She last worked regularly in 2013, and her attempts to work, in 2014 and in 2015, were unsuccessful.

[3] 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.

[4] The Applicant must establish a severe and prolonged disability before the end of her minimum qualifying period (MQP) on December 31, 2008, to qualify for a CPP disability pension (CPPDP). When she applied, she indicated 2014 as her disability onset date.

[5] The General Division of the Social Security Tribunal of Canada (Tribunal) found that there was no medical evidence describing the Applicant's medical conditions or their effect on her ability to work in or around 2008. 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.

[7] I find that the appeal does not have a reasonable chance of success, because there is no evidence in the appeal record to prove that the Applicant had a severe and prolonged disability at or before the end of 2008. The medical information indicates that the Applicant's disabling conditions started in 2013 or 2014.

ISSUE

[8] Is there an argument (a) that the General Division failed to apply the “late applicant” provision or (b) that its decision is based on serious errors in the findings of fact, because it failed to find that her disability was severe and prolonged despite her documented medical problems from 2014 to present?

ANALYSIS

[9] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can only proceed if leave to appeal is granted.¹

[10] 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

[11] 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.

[12] The Applicant submits that the premier’s office told her that she can apply for a CPPDP “as a late comer.” The Applicant’s primary ground of appeal is that the General Division is wrong about her disability because she is in constant physical pain and is chronically depressed.

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

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 DESD Act at subsection 58(1).

⁴ DESD Act at subsection 58(2).

Late Applicant Provision

[13] Although a “late applicant provision” exists in the CPP, it does not help in the Applicant’s specific situation.

[14] The “late applicant provision” in the CPP is meant for applicants who might be entitled to a CPPDP but did not apply for it when they last met the contributory requirements. Its effect is to back-date the application to a time when the claimant had sufficient contributions.⁵

[15] I note that the Applicant does not challenge the finding that her MQP ended on December 31, 2008. Also, there is no evidence in the record that suggests another MQP. The 2008 MQP means that to qualify for a CPPDP, the Applicant needs to establish a severe and prolonged disability on or before December 31, 2008.

[16] The Applicant refers to being a “late comer.” She applied for a CPPDP in March 2015 but did not apply when she last met the contributory requirements in 2008. The Respondent had reviewed the Applicant’s situation under the late applicant provision. However, this provision does not eliminate the requirement for a claimant to establish a severe and prolonged disability on or before their MQP date; it also does not extend the MQP.

[17] The Applicant submits that she was told by the premier’s office that she could get CPPDP as “a late comer.” Perhaps this statement was made, but its meaning is ambiguous. While the Applicant is able to apply as a “late applicant,” she must still establish a severe and prolonged disability on or before December 31, 2008. Neither the Appeal Division nor the General Division of the Tribunal can vary the legal provisions in the CPP, nor can the Premier’s Office.

[18] Therefore, this argument does not have a reasonable chance of success.

Consideration of Medical Problems 2014 to Present

[19] The Applicant’s medical problems from 2014 to present cannot overcome her 2008 MQP.

⁵ CPP at subparagraph 44(1)(b)(ii).

[20] The Applicant argues that in addition to the medical problems listed in her CPPDP application, she has been diagnosed with ankylosing spondylitis, a permanent condition. She asserts that she has provided information for four years showing that she is “genuinely sick.” She submits that she has paid taxes and is entitled to the government’s support when she is in need.

[21] I have reviewed the medical documentation in the appeal record and the Applicant’s submissions. The fundamental problem is that the Applicant’s MQP is in 2008 and her claimed date of disability is in 2014. In order to qualify for a CPPDP, the Applicant has to have had a severe and prolonged disability on or before December 31, 2008.⁶ The terms “severe” and “prolonged” are defined in the CPP and have been interpreted extensively in the jurisprudence.

[22] The Applicant does not assert a pre-2009 disability date. Also, she worked regularly until 2013. Nothing in the appeal record addresses her medical condition and its impact on her capacity to work during her MQP. Therefore, the argument that the General Division erred by failing to find that she had a severe and prolonged disability based on her 2013-2014 medical problems does not have a reasonable chance of success.

[23] I have read and considered the General Division decision and the documentary record. My review does not indicate that the General Division either overlooked or misconstrued important evidence. 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 or that it erred in law in coming to its decision.

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

CONCLUSION

[25] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division

⁶ CPP at paragraph 42(2)(a).