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

Citation: *G. D. v. Minister of Employment and Social Development*, 2017 SSTADIS 601

Tribunal File Number: AD-17-409

BETWEEN:

G. 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: November 2, 2017

REASONS AND DECISION

DECISION

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

OVERVIEW

[2] The Applicant, G. D., seeks a disability pension under the *Canada Pension Plan* (CPP). She maintains that a stroke and consequences of that stroke, in addition to panic attacks, constant pain, exhaustion and numerous surgeries prevent her from working. She last worked in 2013 and has not worked since then.

[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 continuously 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, 2013, to qualify for a CPP disability pension (CPPDP). When she applied, she indicated November 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 that the Applicant's medical conditions and their effect on her ability to work rendered her disabled on or before her MQP. The Applicant stated that her stroke in November 2014 had rendered her disabled. 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 and submitted a new medical report.

[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 2013. The medical information indicates that the Applicant's disabling conditions started in 2014.

ISSUES

[8] Is the Appeal Division able to accept new evidence in the form of a May 2017 medical report from Dr. Richardson?

[9] Is there an argument that the General Division decision is based on serious errors in the findings of fact, because it failed to take into account parts of the evidence in the appeal record?

ANALYSIS

[10] 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 proceed only if leave to appeal is granted. [1]

[11] 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]

[12] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success[3] 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.

[13] The Applicant submits that the General Division did not consider her arguments and that she lost her train of thought during the General Division hearing. She also relies on a new medical report dated May 2017.

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[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).

Is the Appeal Division able to accept new evidence in the form of a May 2017 medical report?

[14] The medical report of May 2017 does not help the Applicant at this stage of the proceedings, and the Appeal Division cannot accept it into evidence now.

[15] New evidence is not a ground of appeal under section 58 of the DESD Act.

[16] It was incumbent upon the Applicant, prior to and at the hearing, to submit to the Respondent and the General Division any evidence she had. At this stage of the proceedings, new evidence is usually not accepted. While there may be exceptional circumstances in which the Appeal Division can receive new evidence, this matter is not one that warrants the application of an exception.

[17] I note that the document submitted by the Applicant is a medical report dated May 2017 describing medical conditions that started in November 2014, July and December 2015 and January and April 2016. These conditions would not be relevant to whether the Applicant had a severe and prolonged disability on or before December 31, 2013.

Is there an argument that the General Division decision is based on serious errors in the findings of fact, because it failed to take into account parts of the evidence in the appeal record?

[18] The General Division took into account the evidence in the appeal record, but the Applicant's medical problems from November 2014 to present cannot overcome her 2013 MQP.

[19] The Applicant argues that since her stroke in November 2014, she has had stress, panic attacks, constant pain, exhaustion and multiple operations. With all that she has been through, she "can't work at all."

[20] It may well be that the Applicant is unable to work now and has been unable to work since she applied for a CPPDP in January 2015. However, the Applicant's MQP ended on December 31, 2013, and that is the crucial date in this appeal.

[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 2013 and her claimed date of disability is in November 2014. In order to qualify for a CPPDP, the Applicant has to have had a severe and prolonged disability on or before December 31, 2013.[5] 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-2014 disability date. While she had health issues before 2014, she was able to work. She worked and attended a course in 2013 and had looked for work in 2014 before her stroke.[6] The evidence in the appeal record does not establish that she was unable to work because of her health condition at or near her MQP date. In fact, the Applicant testified that in 2013 she would have worked more than she did if more work was available, and in 2014, before her stroke in November, she would have worked if work was available.[7] It was not her medical condition that prevented her from obtaining and maintaining employment in late 2013 and the first three-quarters of 2014.

[23] Therefore, the argument that the General Division erred by failing to find that the Applicant had a severe and prolonged disability based on her post-November 2014 medical problems does not have a reasonable chance of success.

[24] The Application refers to the Applicant having lost her train of thought during the General Division hearing. The Applicant suggests that this resulted from the General Division member's comment that the member is a lawyer. While a party's anxiety during a hearing is understandable, the Applicant's statements fall far short of alleging a breach of natural justice.[8]

[25] 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.

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[5] CPP at paragraph 42(2)(*a*).
[6] General Division decision at paragraphs 17 and 18.
[7] General Division decision at paragraphs 16, 18, 2, 39 and 40.
[8] *Baker* v. *Canada (Minister of Citizenship and Immigration)*, [1999] 2 SCR 817.

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

CONCLUSION

[27] The Application is refused.

Shu-Tai Cheng
Member, Appeal Division