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

Citation: *Minister of Employment and Social Development v. W. W.,* 2017 SSTADIS 590

Tribunal File Number: AD-17-606

BETWEEN:

Minister of Employment and Social Development

Applicant

and

W. W.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: November 1, 2017

REASONS AND DECISION

INTRODUCTION

[1] On June 5, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was payable. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division on September 5, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. According to subsections 56(1) and 58(3) of the 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] Subsection 58(1) of the DESD Act provides that the only grounds of appeal available to the Appeal Division 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 therefore decide whether the Applicant has presented a ground of appeal under the DESD Act that may have a reasonable chance of success on appeal.

[6] The Applicant filed a lengthy and detailed Application. It contended that the General Division decision was based on erroneous findings of fact made in a perverse or capricious manner or without regard to the material before it, contained errors of law and did not observe the principles of natural justice. 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. Because I have 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 submitted.

[7] The Applicant argues that the General Division erred when it concluded that the reason the Applicant was able to work for approximately six months after the latest minimum qualifying period date was because her employer was benevolent. The term "benevolent employer" is not defined in the *Canada Pension Plan*. However, there is case law that has considered in detail what a benevolent employer is. The General Division decision did not refer to this case law, and does not appear to have considered all of the relevant factors on this issue. As a result, the General Division decision may be based on an error of law or an error of mixed law and fact. This ground of appeal may have a reasonable chance of success on appeal.

[8] The Applicant also argues that the decision contained a reviewable error as the factual basis for concluding that she was disabled in June 2013 was not made out. The General Division decision did not set out clearly the basis upon which it concluded that the Respondent became disabled in June 2013; specifically, what changed in her circumstances so that she became disabled at this time. The decision may therefore have been based on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it. This ground of appeal also has a reasonable chance of success on appeal.

[9] Finally, the *Canada Pension Plan* also states that a claimant's earnings in a year can be prorated if certain conditions are met, including that they became disabled during the proration period. Without a proper factual basis to find that the Respondent was disabled during this period, the decision may have erred in law, or in fact and in law, when it decided that the claimant's income could be prorated. This ground of appeal also has a reasonable chance of success on appeal.

CONCLUSION

[10] The Application is granted for the reasons set out above. The parties are not restricted to the grounds of appeal considered in this decision at the hearing of the appeal.

[11] The parties are invited to provide submissions on the form the hearing should take as well as all other relevant issues.

[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