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

Citation: *L. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 602

Tribunal File Number: AD-17-535

BETWEEN:

L. B.

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: November 2, 2017

REASONS AND DECISION

PRELIMINARY MATTER

[1] On May 25, 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 July 28, 2017. This Application did not include a signed declaration by the Applicant, so it was incomplete. The Tribunal immediately wrote to the Applicant and advised him that the declaration had to be filed with the Tribunal on or before August 31, 2017, for the Application to be considered complete and filed on time. The Applicant's declaration was received by the Tribunal on September 5, 2017.

[2] Under the *Social Security Tribunal Regulations* (Regulations) an Application must be filed with the Tribunal within 90 days of the date that the Applicant received the General Division decision. In this case, that was 90 days after the Applicant received the decision dated May 25th. The Applicant did not state when he received the decision. The Regulations provide that a document is deemed to be received ten days after it is mailed to a party, so the Application must be filed one hundred days after the date of the decision. One hundred days after May 25th would be after September 5th (when a deadline day falls on a weekend or statutory holiday, the next business day is the deadline). The complete Application, including the declaration, was received on September 5th. I am therefore satisfied that the Application was filed with the Tribunal within the time permitted by the Regulations.

LEAVE TO APPEAL

[3] 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.

[4] 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.

[5] 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.

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

[7] The Applicant presents a number of arguments as grounds of appeal. First, he contends that leave to appeal should be granted because his appeal was heard by one Tribunal member, not three. All appeals are heard by one member of the Tribunal, as required by section 61 of the DESD Act. This is not a ground of appeal under the DESD Act.

[8] The Applicant also argues that leave to appeal should be granted because the Tribunal member did not allow him to physically demonstrate his limitations at the hearing for fear of injury. He submits that without seeing this, the member was unable to properly make a decision in this case. The hearing must comply with the principles of natural justice. This means that all parties must have the opportunity to present their case, answer the case against them and have a decision made by an impartial decision-maker based on the law and the evidence. It is, however, for the member hearing the appeal to control the process at the hearing, including whether a party could provide a physical demonstration. There is no suggestion that the Applicant was unable to explain his conditions at the hearing, or that the Tribunal member did not understand his limitations. I am not satisfied that this argument points to any failure by the General Division to observe the principles of natural justice. This ground of appeal does not have a reasonable chance of success on appeal.

[9] The Applicant also contends that the General Division decision recorded only the evidence that was necessary for the member to make a decision. No error was committed in doing so. In fact, the Federal Court stated the following in *Canada v. South Yukon Forest Corporation*, 2012 FCA 165:

> [Decision-makers] are not trying to draft an encyclopedia memorializing every last morsel of factual minutiae, nor can they. They distill and synthesize masses of information, separating the wheat from the chaff and, in the end, expressing only the most important factual findings and justifications for them.

Hence, not reporting each and every piece of evidence in a decision is not a ground of appeal that has a reasonable chance of success on appeal.

[10] In addition, the Applicant argues that the General Division decision contained errors as it did not explain the Applicant's reasons for not following medical directions. The decision to dismiss his appeal was based, at least in part, on a finding that he had not reasonably done so. I am satisfied that this may have been based on an erroneous finding of fact made without regard to all of the evidence that was before the General Division. This ground of appeal may have a reasonable chance of success on appeal for the following reasons.

[11] The Applicant contends that he did not take prescribed medication because he had overcome an addiction to Oxycocet after surgery and did not want to become addicted again. The decision notes that the Applicant did not take prescribed medication. It does not appear, however, to have considered the Applicant's reasons for this and whether not taking prescribed medication was reasonable in the circumstances.

[12] The Applicant stopped seeing his arm specialist and physiotherapist over one year prior to the minimum qualifying period (the date by which the Applicant must be found to be disabled in order to receive the disability pension). The decision concluded that the Applicant's condition was not severe, at least in part, because there was no ongoing treatment. However, the decision did not consider that treatment may have stopped because there was no further potential benefit that could be offered to him by continued treatment.

[13] The Applicant also contends that he testified that he did not get a carpal tunnel splint because, in the end, his doctor concluded that it would not provide any benefit. This explanation is also not reflected in the decision.

[14] The Applicant disagreed with other findings made in the General Division decision. Because I am satisfied that the Applicant has identified some grounds of appeal that may have a reasonable chance of success on appeal, it is not necessary for me to consider his remaining arguments (*Mette v. Canada (Attorney General)*, 2016 FCA 276).

CONCLUSION

[15] The Application is granted. The parties are not limited to the grounds of appeal considered in this decision at the hearing of the appeal.

[16] 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