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

Citation: *A. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 591

Tribunal File Number: AD-17-658

BETWEEN:

A. P.

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 1, 2017

REASONS AND DECISION

INTRODUCTION

[1] On June 30, 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 October 4, 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] 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] Hence, I must decide whether the Applicant has presented a ground of appeal under section 58 of the DESD Act that has a reasonable chance of success on appeal.

[6] The Applicant filed a detailed Application with the Tribunal that set out numerous grounds of appeal. In summary, she contends that the General Division erred because it relied

more heavily on the medical evidence than on the testimony, she disagrees with how evidence was weighed by the General Division, she asserts that her colitis condition was not understood and that the General Division failed to consider whether her condition was prolonged. Each ground of appeal is dealt with below.

[7] First, the Applicant submits that the Tribunal placed inordinate emphasis on the medical evidence despite the oral evidence at the hearing. The decision states, however, that the Applicant's daughter's testimony was not specific about timelines so was of little assistance. It also states that the Applicant's testimony was at times contradictory to the medical evidence, often not responsive to questions asked, and that the Applicant had difficulty recalling the chronology of her condition. There was also evidence that the Applicant may have memory limitations. In light of these circumstances, the medical/written evidence was preferred. This decision to prefer the written material was made logically and intelligibly.

[8] In addition, it is for the General Division to receive the evidence from the parties, weigh that evidence and reach a decision in each case based on the law and that evidence. It is not for the Appeal Division to reweigh the evidence to reach a different conclusion. The Applicant's invitation to reweigh the evidence so that more emphasis is placed on the testimony, less weight is given to Dr. Gulobov's reports, or less weight is given to specialist reports is not a ground of appeal that has a reasonable chance of success on appeal.

[9] The Applicant also argues that the requirement to provide medical reports to support all of her ailments was beyond her ability and that she was being "punished" for not producing reports for 2010 when her family doctor closed her practice. The decision states that it was very unfortunate that there was no medical evidence in 2010, as the Applicant's minimum qualifying period (the date by which she had to be found to be disabled to receive the benefit claimed) ended on December 31, 2010. The Applicant was not punished for not providing evidence. However, the General Division is only able to make its decision based on the material before it. The fact that there was limited evidence about the Applicant's medical conditions at the relevant time was properly considered by the Tribunal member in making her decision. This ground of appeal does not have a reasonable chance of success on appeal.

[10] Further, the Applicant contends that the General Division erred in law as it did not understand the nature of her complaint, being ulcerative colitis. If the General Division did not understand this, it would not be an error of law. Upon review of the decision, however, I am not persuaded that the General Division failed to understand this condition and its impact on the Applicant. The decision summarized the oral and written evidence, including the impact that the Applicant's condition had on her ability to work and carry out day-to-day activities. It weighed the evidence to reach a logical decision based on the facts and the law. I have also reviewed the written record and am satisfied that the General Division did not overlook or misconstrue any important evidence. This argument does not point to a ground of appeal that has a reasonable chance of success on appeal.

[11] Finally, the Applicant argues that the General Division should have considered whether her condition was prolonged. Under the *Canada Pension Plan*, a claimant must be found to have a disability that is both severe **and** prolonged. Therefore, if the severe criterion is not met, there is no need to consider the prolonged criterion. This is not a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

CONCLUSION

[12] The Application is refused for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division