



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. L. v. Minister of Employment and Social Development*, 2017 SSTADIS 605

Tribunal File Number: AD-17-76

BETWEEN:

H. L.

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 3, 2017

REASONS AND DECISION

INTRODUCTION

[1] On October 24, 2016, 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 January 25, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operations 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 under the DESD Act are that the General Division breached the principles of natural justice, that it made an error of law or that it based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to all of the material before it (see Appendix for the legislative provisions). I must decide whether the Applicant has presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

[4] The Applicant submits that the General Division erred in law, as it did not consider one of the legal arguments presented at the General Division hearing. This was whether his work assisting his wife with the operation of a bed and breakfast is work for a benevolent employer as that term is understood in relevant case law. The Applicant is correct that the Federal Court of Appeal has decided that if a claimant is able to work for a benevolent employer he may still be found disabled under the *Canada Pension Plan* (see, for example, *Atkinson v. Canada (Attorney General)*, 2014 FCA 187). If this issue was raised in written or oral submissions by one of the parties but not considered by the General Division in reaching its decision, the General Division erred in law. This ground of appeal has a reasonable chance of success on appeal.

CONCLUSION

[5] The Application is granted.

[6] The parties are invited to provide a transcription of the General Division hearing recording or to reference the time stamp on the recording in their submissions to identify when this issue was presented at the hearing.

[7] 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

APPENDIX

Department of Employment and Social Development Act

58 (1) The only grounds of appeal are that

- (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.

58 (2) Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.