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

Citation: *D. P. v. Minister of Employment and Social Development*, 2017 SSTADIS 608

Tribunal File Number: AD-17-304

BETWEEN:

D. P.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Kate Sellar

Date of Decision: November 3, 2017

REASONS AND DECISION

INTRODUCTION

[1] On January 18, 2017, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was not payable.

[2] The Applicant filed an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on April 11, 2017. The Applicant and the Tribunal exchanged correspondence in April and May of 2017. On June 8, 2017, the Tribunal acknowledged receipt of a complete Application, and it indicated that the Application appeared to be late, as it was filed more than 90 days after the day on which the Applicant had received the General Division's decision.

[3] As a preliminary matter, the Appeal Division finds that the Application is not late. While the Tribunal did not actually accept the application as complete until after the 90-day mark, the Application met the requirements for an appeal when the Applicant provided the signed declaration on May 10, 2017. This was within the standard grace period the Tribunal had provided in its correspondence with the Applicant and, as such, it was deemed filed within the 90-day period. The Tribunal requested (on several occasions) information about why the Application had a reasonable chance of success. However, on that question, the Tribunal never received more than what was contained in the initial Application—an allegation about bias and unfairness. Although the Tribunal considered the Application complete after receiving the Applicant's submission of June 8, 2017, that submission did not actually contain any further details about why the Application had a reasonable chance of success. The Application met the requirements of an Application under s. 40 of the *Social Security Tribunal Regulations* when the Tribunal received the signed declaration, so the Application is on time.

ISSUE

[4] The Appeal Division must decide whether the appeal has a reasonable chance of success for the purpose of granting leave to appeal.

THE LAW

Leave to Appeal

[5] According to s. 56(1) and 58(3) of the DESDA, 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.

[6] Subsection 58(2) of the DESDA provides that the Appeal Division refuses leave to appeal if it is satisfied that the appeal has no reasonable chance of success. An arguable case at law is a case with a reasonable chance of success [see *Fancy v. Canada (Attorney General)*, 2010 FCA 63].

[7] According to s. 58(1) of the DESDA, the following are the only grounds of appeal:

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.

APPLICANT'S SUBMISSIONS

[8] The Applicant is not represented. He submits that the General Division's decision was unfair and biased because the decision was dated the day after the hearing. The Applicant appears to have conflated the Respondent with the Tribunal in his submission, but he notes that the timing of the issuing of the decision means that, "[…] in CPP's mind, no matter what I would have said would not have made any difference. I was going to be denied which was a waste of my time and was put through a very stressful process." The Applicant also questions the General Division's process, asking how it is that the General Division can determine

entitlement to the disability pension based solely on a review of medical reports by others, rather than by undertaking its own separate physical assessment.

ANALYSIS

[9] The Applicant failed to expressly identify any ground of appeal under s. 58(1) of the DESDA. His submission raises the notion that the General Division was unfair and biased. In some situations, a biased decision maker could be grounds for appeal under s. 58(1)(*a*) of the DESDA. However, the Applicant provides no arguable reason as to why the decision maker was biased. The argument that the timing of the release of the decision alone is indicative of bias has no reasonable chance of success. In correspondence with the Tribunal in April and May of 2017, the Applicant was asked on more than one occasion to provide the reasons why his appeal had a reasonable chance of success, and he did not provide anything further of substance on this question.

[10] The Applicant's concerns related to the general fairness of the Tribunal's process (in that the Tribunal reviews evidence rather than creating it by conducting medical assessments) is not connected to any ground of appeal under the DESDA and, therefore, cannot form the basis of an appeal.

[11] The Appeal Division should go beyond a mechanistic review of the grounds of appeal [see *Karadeolian v. Canada (Attorney General)*, 2016 FC 615]. The Appeal Division examined the record and is satisfied that the General Division did not overlook or misconstrue the evidence in relation to either: (1) the Applicant's capacity to work up to his minimum qualifying period (MQP) on December 31, 2009; or (2) the Applicant's capacity to work at any point during the proration period of January 1 to June 30, 2012.

[12] With respect to the period up to the MQP, the Tribunal did not ignore or misconstrue any evidence about the Applicant having worked from August 1, 2011, to February 1, 2012, or about the fact that he had been laid off, received Employment Insurance benefits, looked for work and attended some schooling (paras. 80, 82 and 84). With respect to the proration period, the General Division did not ignore or misconstrue any evidence in the record when it found that "[t]here exists a complete absence of medical documentation substantiating a [*sic*]

deterioration in his long standing medical condition and functional restrictions between January 1, 2012 and June 30, 2012" (para. 89). The Tribunal did not ignore a report from September 2012 that was just outside the proration period (GD2-80), and it weighed it along with the Applicant's own evidence about his disability during the proration period (para. 89).

[13] The Application is refused.

Kate Sellar
Member, Appeal Division