



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development c. C. T.*, 2017 SSTADIS 614

Tribunal File Number: AD-16-1148

BETWEEN:

Minister of Employment and Social Development

Applicant

and

C. T.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: November 7, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Respondent (Claimant) applied for a Canada Pension Plan (CPP) disability pension after he began receiving a CPP retirement pension. The Applicant denied the disability pension application initially and upon reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on November 17, 2014. In this appeal, the Claimant also claims that certain provisions of the CPP are discriminatory and are contrary to section 15 of the *Canadian Charter of Rights and Freedoms* (Charter). By letter dated August 29, 2016, the Applicant requested, pursuant to section 4 of the *Social Security Tribunal Regulations* (Regulations), that the Tribunal summarily dismiss the Charter claim as it had no reasonable chance of success. On August 31, 2016, the Tribunal refused this request. The Applicant now seeks leave to appeal the decision that refused to summarily dismiss the Charter claim.

ANALYSIS

[2] I must decide whether the Applicant can appeal as of right the decision to refuse to summarily dismiss the Charter claim or if leave to appeal is required. If I decide that leave to appeal is required, I must then decide whether to grant leave to appeal.

Appeal as of Right

[3] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of the Tribunal. Section 56 of the DESD Act provides that an appeal may be brought to the Appeal Division of the Tribunal only if leave to appeal is granted, but that no leave is necessary if an appeal is summarily dismissed by the General Division under subsection 53(3). Section 53 provides that the General Division of the Tribunal must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success. Subsection 53(3) provides that the appellant may appeal the decision to the Appeal Division. The term “appellant” is not defined. Reading sections 53 and 56 of the DESD Act together, the term appellant must refer to the appellant at the General Division. The Applicant was not the appellant at the General Division in this matter, so could not appeal the decision as of right, pursuant to subsection 53(3) of the DESD Act.

[4] Section 4 of the Regulations provides that any party may request the Tribunal to provide for any matter concerning a proceeding. This could include dismissing part of an appeal.

[5] In this case, the Applicant requested that the General Division summarily dismiss the Charter portion of the appeal. This request was properly made pursuant to section 4 of the Regulations. Therefore, the decision not to dismiss the Charter claim was made pursuant to section 4 of the Regulations, not section 53 of the DESD Act. Accordingly the Applicant must obtain leave to appeal before Appeal Division can consider the matter.

Leave to Appeal

[6] Regarding leave to appeal, 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.

[7] The only grounds of appeal available to the Appeal Division under subsection 58(1) of 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.

[8] Subsection 58(2) of the DESDA provides that leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

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

[10] In summary, the Applicant argues that the General Division failed to observe the principles of natural justice and failed to exercise its jurisdiction by refusing to dismiss the

Charter portion of the appeal, and that it erred in law by reversing the onus of proof, as it required the Applicant to file its Charter record when the Claimant had not done so. This required the Applicant to prove that no Charter breach had occurred when the Claimant should bear the onus of proving that there was a Charter breach.

[11] I am satisfied that the General Division may have failed to observe the principles of natural justice when it refused to dismiss the Claimant's Charter claim. The Applicant contended that the Claimant's Charter record did not clearly set out the basis for his argument that subsection 15(1) of the Charter had been breached. Consequently, the Applicant did not know the case it had to meet in this litigation. One of the principles of natural justice is that all parties are to know the case they have to meet and have the opportunity to do so. If the Claimant's Charter record did not set out the basis for his claimed breach of subsection 15(1) of the Charter, the Applicant could not know and adequately respond to the Respondent's case. This ground of appeal may have a reasonable chance of success on appeal.

[12] In *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal stated that it is not necessary for the Appeal Division to address all the grounds of appeal an applicant raises. As I am satisfied that the Applicant has presented a ground of appeal that may have a reasonable chance of success, I need not consider the other grounds of appeal presented. The parties are not, however, restricted to the ground of appeal considered in this decision at the hearing of the appeal.

CONCLUSION

[13] The application for leave to appeal is granted.

[14] 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