



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. Z. Y.*, 2017 SSTADIS 597

Tribunal File Number: AD-17-232

BETWEEN:

Minister of Employment and Social Development

Applicant

and

Z. Y.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: November 2, 2017

REASONS AND DECISION

DECISION

[1] The application for leave to appeal (Application) is granted.

OVERVIEW

[2] The Applicant, the Minister of Employment and Social Development, seeks leave to appeal a decision of the General Division of the Social Security Tribunal of Canada granting a disability pension under the *Canada Pension Plan* (CPP) to the Respondent, Z. Y.

[3] The Respondent maintains that a back injury from an assault and a brain injury from a stroke prevent her from working. Her reported income is from her husband's business. According to her, this income resulted from attribution by the accountant and not from actually working.

[4] The General Division found that the Respondent has been unable to perform regular work since 2001, and that she had had a severe and prolonged disability at that time. It also found that she is deemed disabled as of June 2013 (based on her September 2014 application).

[5] The Applicant submits that the General Division erred in law in making its decision and that it also based its decision on serious errors in its fact finding.

[6] I find that this appeal has a reasonable chance of success, because the General Division found that the Respondent had had a severe and prolonged disability in 2001. This finding appears to be inconsistent with the Respondent having valid earnings and contributions starting only in 2005 and going through 2009.

ISSUES

[7] Is there an argument that the General Division erred in law by finding a 2001 disability date based on contributions to the CPP in 2005 to 2009?

ANALYSIS

[8] An applicant must seek leave to appeal in order to appeal a General Division decision. The Appeal Division must either grant or refuse leave to appeal, and an appeal can proceed only if leave to appeal is granted.¹

[9] Before I can grant leave to appeal, I must decide whether the appeal has a reasonable chance of success. In other words, is there an arguable ground upon which the proposed appeal might succeed?²

[10] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success³ based on a reviewable error.⁴ The only reviewable errors are the following: the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction; it erred in law in making its decision, whether or not the error appears on the face of the record; or it based its decision on an erroneous finding of fact that it had made in a perverse or capricious manner or without regard for the material before it.

[11] The Applicant submits that the General Division made errors of law and serious errors in its findings of fact, and it has provided arguments on each one.

[12] Although the Applicant has submitted numerous grounds of appeal, the Appeal Division need not address all the grounds of appeal raised. Where individual grounds of appeal are interrelated, it may be impracticable to parse the grounds. One arguable ground of appeal may suffice to justify granting leave to appeal.⁵ Therefore, I will address one possible error—not every alleged error—that warrants further review.

¹ *Department of Employment and Social Development Act* (DESD Act) at subsections 56(1) and 58(3).

² *Osaj v. Canada (Attorney General)*, 2016 FC 115, at paragraph 12; *Murphy v. Canada (Attorney General)*, 2016 FC 1208, at paragraph 36; *Glover v. Canada (Attorney General)*, 2017 FC 363, at paragraph 22.

³ DESD Act at subsection 58(1).

⁴ DESD Act at subsection 58(2).

⁵ *Mette v. Canada (Attorney General)*, 2016 FCA 276.

Is There an Argument That the General Division Erred in Law by Finding a 2001 Disability Date Based on Contributions to the CPP in 2005 to 2009?

[13] I find that there is an arguable case on the ground of appeal that the General Division may have made an error of law as it relates to the Applicant's contributory period.

[14] The Respondent arrived in Canada in 2001, and she had valid earnings and contributions from 2005 to 2009. Based on her reported earnings and CPP contributions, her minimum qualifying period (MQP) was established as December 31, 2011. In other words, her contributory period ended on December 31, 2011.

[15] The General Division found that the Respondent had had a severe and prolonged disability as of 2001. The Respondent submits that this finding would preclude a finding that the Respondent made valid contributions after 2001 because her contributory period would have ended in 2001. Said otherwise, if in 2001 she was disabled, as defined in the CPP, then her contributory period would have ended and she could not have valid contributions after that.

[16] The CPP defines the contributory period of a claimant. It commences January 1, 1966, or when the claimant reaches 18 years of age (whichever is later) and ends with the month that the claimant is determined to have become disabled.⁶

[17] The General Division determined that the Respondent was disabled in 2001, which has the effect of ending her contributory period in 2001. However, the General Division also found that she had valid contributions after 2001 and that her contributory period ended in 2011. These findings are inconsistent.

[18] For these reasons, whether the General Division erred in law warrants further review.

[19] I am satisfied that the appeal has a reasonable chance of success on the basis of a possible error of law.

⁶ CPP at paragraph 44(2)(b) and subsection 56(5).

CONCLUSION

[20] The Application is granted pursuant to paragraphs 58(1)(b) of the DESD Act.

[21] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

Shu-Tai Cheng
Member, Appeal Division