



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. F. H.*, 2017 SSTADIS 636

Tribunal File Number: AD-16-1219

BETWEEN:

**Minister of Employment and Social Development**

Applicant

and

**F. H.**

Respondent

---

**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

---

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: November 14, 2017

## REASONS AND DECISION

### INTRODUCTION

[1] The Respondent (Claimant) applied for and began to receive a Canada Pension Plan retirement pension in December 2010. In March 2013, he applied for a Canada Pension Plan disability pension. The Applicant (Minister) refused this pension application initially and upon reconsideration because, pursuant to the *Canada Pension Plan* (CPP), the Claimant could not be deemed disabled prior to the commencement of payment of the retirement pension. The Claimant appealed this decision to the General Division of the Social Security Tribunal of Canada (Tribunal). The Claimant also argued that paragraph 42(2)(b) of the CPP (15 months retroactive limit to being deemed disabled) discriminated against him on the basis of his disability contrary to section 15 of the *Canadian Charter of Rights and Freedoms* (Charter).

[2] The Minister requested, pursuant to section 4 of the *Social Security Tribunal Regulations* (Regulations) that the General Division summarily dismiss the Charter portion of the appeal. On July 19, 2016, the General Division decided that the request for summary dismissal would not be considered until after the Minister had delivered its Charter record.

[3] The Minister seeks to appeal this decision.

### ANALYSIS

[4] I must decide whether the Minister can appeal as of right the decision not to consider the request to summarily dismiss the Charter claim or whether 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**

[5] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. Section 56 of the DESD Act provides that an appeal may be brought to the Tribunal's Appeal Division only if leave to appeal is granted, but that no leave to appeal is necessary if the General Division has summarily dismissed an appeal under subsection 53(3). Section 53 provides that the Tribunal's General Division 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 Minister was not the appellant at the General Division in this matter, so it could not appeal the decision as of right, pursuant to subsection 53(3) of the DESD Act.

[6] 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.

[7] In this case, the Minister 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 consider the request was made pursuant to section 4 of the Regulations, not section 53 of the DESD Act. Accordingly, the Minister must obtain leave to appeal before Appeal Division can consider the matter.

### **Leave to Appeal**

[8] 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.

[9] 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.

[10] 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.

[11] Hence, I must decide whether the Minister has presented a ground of appeal under the DESD Act that has a reasonable chance of success on appeal.

[12] In summary, the Minister argues that the General Division failed to observe the principles of natural justice by finding that the Claimant's Charter record was not necessary or was sufficient, that it neglected to observe the principles of natural justice by refusing to consider the request for summary dismissal, that it erred in law as it did not consider the sufficiency of the Claimant's Charter record to ground the constitutional challenge, and that it erred in law by reversing the onus of proof, as it required the Minister to, essentially, establish that no Charter breach had occurred when the Claimant should bear the onus of proving that there was a Charter breach.

[13] I am satisfied that the General Division may have failed to observe the principles of natural justice when it refused to consider the request to dismiss the Claimant's Charter claim. The Minister contended that the Claimant's Charter record did not sufficiently set out the basis for his argument that subsection 15(1) of the Charter had been breached. Consequently, the Minister 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 that they have the opportunity to do so. If the Claimant's Charter record did not adequately set out the basis for his claimed breach of subsection 15(1) of the Charter, the Minister could not know and respond to the Claimant's case. This ground of appeal has a reasonable chance of success on appeal.

[14] 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 that an applicant raises. As I am satisfied that the Applicant has presented a ground of appeal that has 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**

[15] The Application is granted for the reasons set out above.

[16] 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