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

Citation: *L. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 632

Tribunal File Number: AD-17-135

BETWEEN:

L. S.

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 10, 2017

REASONS AND DECISION

INTRODUCTION

[1] On November 21, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* was not payable. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on February 9, 2017.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operation 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 available under the DESD Act are set out in subsection 58(1). They are that the General Division failed to observe the principles of natural justice, made an error of law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it. Subsection 58(2) states that leave to appeal is to be refused if the appeal has no reasonable chance of success (see Appendix).

[4] The Applicant submits, first, that the General Division failed to observe the principles of natural justice. In particular, she contends that the General Division did not permit her husband to fully testify at the hearing, and "cut off" his testimony at the 90-minute mark of the hearing. She also contends that she was not permitted to fully explain her answers to some of the questions asked during the hearing, and although she was promised an opportunity to do so, it did not occur before the hearing ended. The General Division then relied on her incomplete answers in its decision.

[5] The principles of natural justice are concerned with ensuring that parties to an appeal have a full opportunity to present their case, know and answer the case against them, and that they have an impartial decision maker decide the matter based on the law and the facts. At the same time, the Tribunal member presiding at a hearing controls the process at the hearing,

which may include stopping a witness from giving testimony that is not relevant to the matters at hand. If the Applicant is correct and she or her husband was not permitted to fully present their evidence, the General Division neglected to observe the principles of natural justice. This ground of appeal may have a reasonable chance of success on appeal.

[6] The Applicant also refers to a number of reports penned by her family physician that support her disability claim. The decision summarized these reports, as well as a report by Dr. Rumack that was contradictory to this. In *Atri v. Canada (Attorney General)*, 2007 FCA 178, the court concluded that by not analyzing the conflicting evidence before it, the decision maker had failed to discharge its statutory duty to provide adequate reasons for its decision. In this case, I am satisfied that the General Division may not have analyzed the conflicting medical evidence before it, including Dr. Rumack's report, the occupational therapists' assessment, and the evidence from the family doctor. This is also a ground of appeal that may have a reasonable chance of success.

[7] Alternatively, I am satisfied that the General Division may not have properly accounted for all of the evidence that was before it (*Eby v. Canada (Attorney General)*. 2017 FC 468). This may have resulted in the decision being based, at least in part, on an erroneous finding of fact made without regard to all the material that was before the General Division. This is a ground of appeal that may also have a reasonable chance of success.

[8] The Applicant also made lengthy submissions outlining several findings of fact that she asserts were made without regard to all the material that was before the General Division. Many of these arguments refer to and answer the Respondent's submissions set out in paragraph 33 of the decision. The Applicant is reminded that paragraph 33 of the General Division decision simply summarizes the Respondent's legal position; it does not adopt it.

[9] In *Mette v. Canada (Attorney General)*, 2016 FCA 276, the Federal Court of Appeal indicated that it is not necessary for the Appeal Division to address all the grounds of appeal an applicant raises. Because I have found that some grounds of appeal have a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant had submitted.

CONCLUSION

[10] The Application is granted for the reasons set out above. The parties are not restricted to the grounds of appeal considered in this decision for the appeal.

[11] 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.