



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. P. R.*, 2017 SSTADIS 645

Tribunal File Number: AD-17-542

BETWEEN:

Minister of Employment and Social Development

Applicant

and

P. R.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Shu-Tai Cheng

Date of Decision: November 15, 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, P. R.

[3] The Respondent maintains that injuries from a car accident and diabetes prevent him from working. The General Division found that the Respondent had had a severe and prolonged disability since he stopped work in March 2014.

[4] 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 findings of fact.

[5] I find that this appeal has a reasonable chance of success, because the General Division may have erred in law in making its decision.

ISSUES

[6] Is there an argument that the General Division erred in law (a) by failing to complete the *Villani*¹ real-world assessment or (b) by failing to provide adequate reasons for its decision?

ANALYSIS

[7] 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.²

¹ *Villani v. Canada (Attorney General)*, 2001 FCA 248.

² *Department of Employment and Social Development Act* (DESD Act) at subsections 56(1) and 58(3).

[8] 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?³

[9] Leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success⁴ based on a reviewable error.⁵ 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 made in a perverse or capricious manner or without regard for the material before it.

[10] 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.

[11] 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.⁶ Therefore, I will address two possible errors—not every alleged error—that warrants further review.

Is There an Argument That the General Division Erred in Law by Failing to Complete the Villani Real-world Assessment?

[12] I find that there is an arguable case on the ground of appeal that the General Division may have made an error of law in failing to complete the real-world assessment required by binding jurisprudence.

³ *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.

⁴ DESD Act at subsection 58(1).

⁵ DESD Act at subsection 58(2).

⁶ *Mette v. Canada (Attorney General)*, 2016 FCA 276.

[13] The General Division was required to conduct an assessment of the “severe” criterion in a real-world context.⁷ This means keeping in mind factors such as age, level of education, language proficiency, and past work and life experience, when determining whether a person is incapable regularly of pursuing any substantially gainful occupation. This assessment seeks to determine a claimant’s workforce attachment in light of their medical condition and the limitations resulting from this condition. If the General Division failed to reasonably determine the Respondent’s workforce attachment, then the *Villani* real-world assessment was not complete.⁸

[14] The General Division’s analysis of the “severe” criterion is comprised of seven paragraphs.⁹ Three of these paragraphs repeat portions of the evidence from earlier paragraphs of the decision.¹⁰ One paragraph refers to the *Villani* case.¹¹ Three paragraphs state the General Division’s conclusions.¹² However, the General Division’s explanation of its conclusions appears to be that “it is evident” that the Applicant “does suffer a severe disability.”

[15] It is arguable whether the General Division completed the required assessment with the analysis that is contained in its decision.

Is There an Argument That the General Division Erred in Law by Failing to Provide Adequate Reasons for its Decision?

[16] I find that there is an arguable case that the General Division may have made an error of law as it relates to the adequacy of its reasons.

[17] The Applicant submits that the General Division decision contains insufficient reasons because it did not provide any analysis as to how the Respondent’s conditions were severe within the meaning of the CPP.

[18] This line of argument is related to the General Division’s analysis discussed in paragraphs 12 to 15 above.

⁷ *Villani v. Canada (Attorney General)*, 2001 FCA 248.

⁸ *Murphy v. Canada (Attorney General)*, 2016 FC 1208.

⁹ General Division decision, paragraphs 31 to 37.

¹⁰ *Ibid.*, paragraphs 33 to 35.

¹¹ *Ibid.*, paragraph 31.

¹² *Ibid.*, paragraphs 32, 36 and 37.

[19] Whether the General Division decision adequately meets the principles of law relating to the sufficiency of reasons warrants further review.

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

CONCLUSION

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

[22] 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