



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. B. v. Minister of Employment and Social Development*, 2017 SSTADIS 634

Tribunal File Number: AD-17-629

BETWEEN:

D. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

HEARD ON

DATE OF DECISION: November 10, 2017

REASONS AND DECISION

DECISION

[1] The appeal is dismissed because the Appellant applied too late for a disability pension.

INTRODUCTION

[2] The Appellant worked as a service manager at an automotive dealership. He suffered from significant heart disease, retired at age 60, and began to receive a retirement pension under the *Canada Pension Plan* (CPP) in May 2012. The Appellant applied for a CPP disability pension in November 2016. The Respondent denied the disability pension application initially and on reconsideration because he could not be found to be disabled before he began receiving the retirement pension. The Appellant appealed the reconsideration decision to the General Division of the Social Security Tribunal (Tribunal). On June 7, 2017, the Tribunal summarily dismissed the Appellant's claim for a CPP disability pension.

[3] The Appellant appealed the General Division decision on September 18, 2017. No leave to appeal was required as subsection 56(2) of the *Department of Employment and Social Development Act* (DESD Act) provides that no leave is necessary in the case of an appeal brought under subsection 53(3), which is the provision for summary dismissal decisions.

[4] The Appellant filed submissions within the time permitted by the DESD Act. The Respondent filed no submissions.

[5] This appeal proceeded on the basis of the written record for the following reasons:

- a) Pursuant to paragraph 37(a) of the *Social Security Tribunal Regulations*, the Member determined that no further hearing is required;
- b) The Appellant clearly identified the issue to be decided and addressed it in the documents filed; and

- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[6] The DESD Act governs the operation of this Tribunal. The only grounds of appeal available under 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.

[7] The Federal Court of Appeal decision *Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93, decided that administrative tribunals must look first to their governing statutes for guidance in determining their role and what standard of review is to be applied to decisions under review.

[8] Paragraphs 58(1)(a) and (b) of the DESD Act do not qualify errors of law or breaches of natural justice, which suggests that the Appeal Division should afford no deference to the General Division's interpretations on these issues. Paragraph 58(1)(c), which deals with erroneous findings of fact, contains the qualifiers "perverse or capricious" and "without regard for the material before it." As suggested by *Huruglica*, these words must be given their own interpretation. The language suggests that the Appeal Division should intervene when the General Division bases its decision on an error that is clearly egregious or at odds with the record.

ANALYSIS

[9] The Appellant wrote in his appeal documents that he did not know about the CPP disability pension before he applied for it in 2016. He argues that it is vital that the public be made aware of this program, and that he had provided all the relevant medical information to support his disability claim.

[10] The Appellant presented these same arguments at the General Division. The General Division decision considered them. It correctly concluded that this Tribunal has only the authority given to it under the DESD Act. The Tribunal cannot grant relief to a claimant based on compassion or extenuating circumstances. The decision correctly sets out that the relevant provisions of the CPP provide that a disability pension cannot be substituted for a retirement pension if the individual cannot be deemed to be disabled prior to beginning to receive the retirement pension. The General Division came to the correct conclusion. The Appellant's claim could not succeed because he could not be found to be disabled prior to when he began receiving a CPP retirement pension as he had applied for the disability pension more than 15 months after the retirement pension began to be paid to him. The General Division made no error under section 58 of the DESD Act.

[11] I have sympathy for the Appellant and his circumstances. Unfortunately, the fact that the Appellant was unaware of the CPP disability pension is not a reason in law for the General Division decision to be overturned. This argument does not point to any error made by the General Division.

CONCLUSION

[12] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division