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

Citation: *R. R. v. Minister of Employment and Social Development,* 2017 SSTADIS 699

Tribunal File Number: AD-17-525

BETWEEN:

R. R.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Neil Nawaz

Date of Decision: November 30, 2017

DECISION AND REASONS

DECISION

Leave to appeal is refused.

OVERVIEW

[1] The Applicant, R. R., who is now 49 years old, was born in India and came to Canada at the age of 10. She had previously owned and operated her own daycare business and was working as a machine operator when she injured her wrist in April 2008. This compounded back, neck and shoulder injuries that she had earlier sustained in a motor vehicle accident.

[2] In August 2015, the Respondent, the Minister of Employment and Social Development (Minister), refused the Applicant's application for a disability pension under the *Canada Pension Plan* (CPP). The Minister acknowledged that Ms. R. R. suffered from chronic pain, but it found no evidence that it prevented her from performing suitable work within her functional limitations during the minimum qualify period (MQP), which ended on December 31, 2011.

[3] Ms. R. R. appealed the Minister's refusal to the General Division of the Social Security Tribunal (Tribunal). It found that the Applicant had not demonstrated a severe disability, nor had she attempted light or sedentary work since being laid off from her factory job.

[4] Ms. R. R. has now requested leave to appeal from the Appeal Division, alleging that the General Division failed to consider medical evidence that her disability was severe.

[5] I have reviewed the General Division's decision against the underlying record and have concluded that Ms. R. R. has not advanced any grounds that would have a reasonable chance of success on appeal.

ISSUES

[6] According to section 58 of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds of appeal to the Appeal Division: The General Division (i) failed to observe a principle of natural justice; (ii) erred in law; or (iii) based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the

material. An appeal may be brought only if the Appeal Division first grants leave to appeal,[1] but the Appeal Division must first be satisfied that it has a reasonable chance of success.[2] The Federal Court of Appeal has held that a reasonable chance of success is akin to an arguable case at law.[3]

[7] I must determine whether Ms. R. R. has an arguable case on the following questions:

Issue 1: Did the General Division fail to consider the evidence in its totality?

Issue 2: Did the General Division ignore medical evidence that her disability was severe?

ANALYSIS

Issue 1: Did the General Division fail to consider the evidence in its totality?

[8] Ms. R. R. alleges that the General Division erred in failing to consider the totality of the evidence. She specifically referred to three medical reports that she submits the General Division overlooked:

- A letter dated August 6, 2013, in which Dr. M.A. Pinto wrote that Ms. R. R.'s chronic neck and shoulder condition had left her unemployable;
- A letter dated September 2, 2012, in which Dr. J.S. Baath wrote that Ms. R. R.'s chronic pain meant that she would never be able to return to work;
- A psychiatric assessment dated December 6, 2016, in which Dr. J. S. Dhaliwal found that Ms. R. R.'s anxiety and depression had left her functionally impaired and unable to work.

[9] It is settled law that an administrative tribunal charged with fact finding is presumed to have considered all the evidence before it and need not discuss each and every element of a

[1] DESDA at subsections 56(1) and 58(3).
[2] Ibid. at subsection 58(1).
[3] *Fancy v. Canada (Attorney General)*, 2010 FCA 63.

party's submissions.[4] That said, I have reviewed the General Division's decision and have found no indication that it ignored, or gave inadequate consideration to, any significant item of evidence.

[10] The General Division's decision contains what appears to be a fairly thorough summary of Ms. R. R.'s medical file, followed by an analysis that meaningfully discussed the documentary and oral evidence. As for the reports highlighted by Ms. R. R.'s counsel, the General Division explicitly referred in its decision to the findings of Drs. Pinto, Baath and Dhaliwal, noting that the three treatment providers had generated multiple reports that did not differ in substance from one another. The General Division was aware that they had all found her, in varying degrees, unable to work, but it was also obliged to consider competing evidence, some of which indicated residual capacity. Assessing disability under the CPP is a legal exercise as much as it is a medical one, and a physician's opinion does not necessarily determine the matter.

[11] I see no arguable case on this ground.

Issue 2: Did the General Division ignore evidence of severity?

[12] Ms. R. R. alleges that the General Division dismissed her appeal despite medical evidence indicating that her overall condition was "severe," according to the CPP criteria.

[13] Here, too, I fail to see an arguable case. Ms. R. R.'s submissions on this ground amount to a recapitulation of evidence and argument that were already presented to the General Division. She has not identified how, in coming to its decision, the General Division failed to observe a principle of natural justice, committed an error in law or made an erroneous finding of fact. My review of its decision indicates that the General Division analyzed in detail Ms. R. R.'s claimed medical conditions—principally chronic pain, depression and anxiety—and whether they affected her capacity to regularly pursue substantially gainful employment during the MQP. In doing so, it took into account her background—including her age, education and work experience—but found that they were not significant impediments to her ability to retrain or perform alternate work. The General Division put forth defensible reasons for preferring

[4] *Simpson v. Canada (Attorney General)*, 2012 FCA 82.

certain items of evidence over others, and I do not see an arguable case, as counsel has suggested, that it was in breach of the principles outlined in *R. v. Sheppard*.[5]

[14] In the absence of a specific allegation of error, I find this claimed ground of appeal to be so broad as to amount to a request to retry the entire claim. If Ms. R. R. is asking me to reassess the evidence and substitute my judgment for the General Division's, I am unable to do this. My authority as an Appeal Division member permits me to determine only whether any of an applicant's reasons for appealing falls within the specified grounds of subsection 58(1) and whether any of them has a reasonable chance of success.

CONCLUSION

[15] As Ms. R. R. has not identified any grounds of appeal under subsection 58(1) of the DESDA that would have a reasonable chance of success on appeal, the application for leave to appeal is refused.

Member, Appeal Division

[5] *R. v. Sheppard*, [2002] 1 SCR 869, 2002 SCC 26.