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

Citation: *L. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 720

Tribunal File Number: AD-17-499

BETWEEN:

L. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION

Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: December 8, 2017

DECISION AND REASONS

DECISION

[1] The application requesting leave to appeal is refused.

OVERVIEW

[2] The Applicant, L. S., worked as a care aide and care provider, as recently as July 2008, and then ran a relaxation massage and aromatherapy business until April 2009. She claims that she is unable to work because of a severe and prolonged disability. She applied for a Canada Pension Plan disability pension on December 6, 2011 and again on December 28, 2012, but the Respondent denied both applications.

[3] The Applicant appealed the Respondent's latest decision to the General Division[1], which in turn determined that she had not been severely disabled by her minimum qualifying period of December 31, 1989, and that she had not become disabled within a prorated period between January 1, 1990 and November 30, 1990. (The minimum qualifying period is the date by which an appellant is required to be found disabled.) The Applicant now seeks leave to appeal the General Division's decision. She claims that the General Division erred in law and that it failed to observe a principle of natural justice. I must decide whether the appeal has a reasonable chance of success on either of these two grounds.

PRELIMINARY MATTER

[4] In her application requesting leave to appeal filed on July 7, 2017, the Applicant sought "more time for this matter," but this is not the first occasion on which she has requested an extension of time. She has not explained why an extension is necessary, or explained how any proposed new records could be relevant to an appeal, or even suggested that she is involved in any other proceedings that could impact her

[1] The General Division summarily dismissed her appeal on May 31, 2015, on the basis that the Applicant had insufficient valid contributions to the Canada Pension Plan. The Applicant appealed this decision to the Appeal Division. I rendered a decision on November 4, 2015, granting her appeal, as I determined that the Applicant could rely on the late applicant provisions to establish a minimum qualifying period. I returned the matter to the General Division for a determination on whether the Applicant could be found disabled by her minimum qualifying period. The application herein relates to the General Division's decision rendered on April 4, 2017.

appeal. If she is proposing to file any new records, she has had ample opportunity to obtain them.

ISSUE

[5] Does the appeal have a reasonable chance of success on the issues of whether the General Division erred in law or failed to observe a principle of natural justice?

GROUNDS OF APPEAL

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey*.[2]

ANALYSIS

Did the General Division fail to observe a principle of natural justice?

[8] No. The General Division did not fail to observe a principle of natural justice, for the reasons that follow.

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[2] *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[9] The Applicant suggests that the General Division failed to observe a principle of natural justice because it may not have had her income tax returns, or sufficient information regarding her employment as a care provider. She indicates that she will be sending additional information in support of her claim.

[10] Natural justice is concerned with ensuring that an applicant has a fair opportunity to present his or her case, and that the proceedings are fair and free of any bias.

[11] There is no indication that the General Division deprived the Applicant of any opportunity to fully present her case. Indeed, the General Division carefully documented the numerous instances in which it had adjourned the proceedings, not only to provide the Applicant with an opportunity to obtain any necessary documentation, but also so that she could better appreciate the issues and the case that she was required to meet. This despite the fact that, in a decision rendered by me on November 4, 2015, I had outlined that the Applicant would need to prove that she had a severe and prolonged disability by no later than December 31, 1989. I had also granted leave for the Applicant to file any additional medical or business records pertaining to her self-employment, subject to any orders made by the General Division.

[12] While the Applicant sought a further adjournment before the General Division in the hearing that took place on March 6, 2017, concerned that there might be outstanding records, the General Division noted that the hearing file contained several hundreds of pages and that the Applicant was aware of the case she had to meet. It also noted that she was unable to identify what records might be outstanding or what additional records could be relevant to her appeal. The General Division might have granted an adjournment had the Applicant been able to identify what additional records she sought to introduce into evidence and had she been able to establish their relevancy to the proceedings. In this regard, I agree that the Applicant failed to establish a credible basis for a further adjournment before the General Division.

[13] The Applicant now argues that she had intended to produce her income tax returns and employment records. Her past correspondence suggests that the employment

records and income tax returns are relevant because they will extend her minimum qualifying period beyond 1989.

[14] However, I had previously addressed this issue in my November 2015 decision, when I determined that the General Division was unable to adjust her earnings for 2007. I noted that, under section 97 of the *Canada Pension Plan*, any entry in the Record of Earnings was conclusively presumed to be accurate and was not to be called into question after four years had elapsed from the end of the year in which the entry had been made.

[15] The Applicant's income tax returns and any additional business or employment records were irrelevant to the issues before the General Division. (The General Division already had multiple copies of the Applicant's tax records and her correspondence with the Canada Revenue Agency.)

[16] The Applicant indicates that she will now be providing these records. Apart from the fact that these additional records are irrelevant, new evidence generally is not admissible on an appeal, unless it falls within any of the exceptions, such as whether it addresses any of the grounds of appeal. The circumstances here do not fall within any of the exceptions and I see no basis on which I can consider any proposed new evidence.

[17] The Applicant has not satisfied me that the appeal has a reasonable chance of success over the issue that the General Division failed to observe a principle of natural justice.

Did the General Division err in law?

[18] No. The General Division did not err in law, whether or not the error appears on the face of the record. The Applicant disputes the Canada Revenue Agency's income tax assessments, but these issues are well beyond the jurisdiction of the General Division. The Applicant's recourse, if any, may lie elsewhere.

[19] I have reviewed the General Division's decision to determine whether the member might have erred, whether or not it appears on the face of the record. The General Division reviewed the medical evidence and noted that there was little medical

evidence regarding the Applicant's disability in or around the end of the minimum qualifying period or the period of proration. The General Division found that the overall medical evidence simply was not compelling to establish that the Applicant had a severe disability by December 31, 1989 or that one arose sometime between January 1 and November 30, 1990. More problematic for the Applicant, however, was the fact that she had worked at a substantially gainful occupation well after these dates, as evidenced by the fact that in 2008 and 2009, she had earnings exceeding $32,000 and $19,000.

[20] In my November 2015 decision, I suggested to the Applicant that she might wish to consider adducing medical evidence to establish that she was disabled by the minimum qualifying period and that she should consider explaining why her earnings after the minimum qualifying period might not in fact represent a substantially gainful occupation.[3] However, as the General Division noted, the Applicant simply failed to provide any evidence to support a finding that any work after 1990 was not substantially gainful or that she was not capable regularly of pursuing a substantially gainful occupation.

CONCLUSION

[21] I am not satisfied that the appeal has a reasonable chance of success. The application requesting leave to appeal is therefore refused.

Janet Lew
Member, Appeal Division

[3] See para. 60 of November 2015 decision.