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

Citation: *R. G. v. Minister of Employment and Social Development,* 2017 SSTADIS 737

Tribunal File Number: AD-17-649

BETWEEN:

R. G.

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: December 14, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] The Applicant completed her schooling in India, then moved to Canada. She worked in a physically demanding job until she was in a car accident. She has not worked since the accident. The Applicant applied for a Canada Pension Plan disability pension and claimed that she was disabled by the physical injuries and mental illness that resulted from the car accident. The Respondent denied her application initially and on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On June 28, 2017, the Tribunal's General Division determined that the Applicant was not disabled under the *Canada Pension Plan*. The Applicant filed an incomplete application for leave to appeal (Application) with the Tribunal's Appeal Division on September 28, 2017.

PRELIMINARY MATTER: LATE APPLICATION

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. Section 57 provides that a complete application must be filed within 90 days of when the General Division decision was received. This time may be extended. The Application filed with the Tribunal on September 28, 2017, was incomplete. On October 10, 2017, the Tribunal wrote to the Applicant and advised her that the Application was incomplete, what was missing, and that these documents had to be filed with the Tribunal by November 10, 2017, for the Application to be considered filed on time.

[3] The Applicant provided the documents required within the time prescribed, except for a signed declaration that the information in the Application was true. The Applicant signed the declaration on October 27, 2017, but her representative did not file it with the Tribunal until November 23, 2017. Therefore, the Application was late.

[4] It is clear to me that the Applicant acted quickly to supply the information necessary to complete the Application on time. All of the information except the declaration was filed within the time permitted. The Applicant also signed the declaration within this time. No party has objected to the filing of the documents, or suggested that the matter should not proceed. I cannot imagine how either party would be prejudiced if the matter did not proceed at this time.

It is in the interests of justice for this matter to proceed as quickly as the circumstances permit. Consequently, in the circumstances of this case, the time for filing the documents necessary to complete the Application is extended pursuant to subsection 57(2) of the DESD Act, and I find that the Application was therefore not late.

LEAVE TO APPEAL

[5] 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.

[6] 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 a principle 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 for 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.

[7] I must decide whether the Applicant has presented a ground of appeal under subsection 58(1) of the DESD Act that has a reasonable chance of success on appeal.

[8] The Applicant presents a number of grounds of appeal. She contends that the General Division erred in law as the decision did not summarize all of the mental health practitioners' reports that were filed with the Tribunal, and that it focused on the Applicant's physical conditions and not her mental illness when it decided that she was not disabled.

[9] Simply failing to specifically mention a piece of evidence in a decision is not an error. In fact, the Federal Court of Appeal stated, in *Canada v. South Yukon Forest Corporation*, 2012 FCA 165 (CanLII), that decision makers "are not trying to draft an encyclopedia memorializing every last morsel of factual minutiae, nor can they. They distill and synthesize masses of information, separating the wheat from the chaff and, in the end, expressing only the most important factual findings and justifications for them."

[10] In addition, the General Division is presumed to have considered all of the evidence before it (*Simpson v. Canada (Attorney General)*, 2012 FCA 82). This presumption can be rebutted if an applicant establishes that the evidence was of such probative value that the decision maker ought to have considered it. In this Application, the Applicant refers to Dr. Sharma's report of March 10, 2017, which states that the Applicant was not able to work, that her chronic pain was not likely to improve and that she had a poor or guarded prognosis because of this. This evidence was certainly relevant to the issue to be decided by the General Division. It is not clear whether it was considered, or why it was not given weight in making the decision. I am therefore satisfied that this argument points to an error of law, and is a ground of appeal that has a reasonable chance of success on appeal.

[11] 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 one ground of appeal has a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant has submitted.

[12] The parties are not restricted to this ground of appeal at the hearing of the appeal.

CONCLUSION

[13] The Application is granted.

[14] 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