



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. E. v. Minister of Employment and Social Development*, 2017 SSTADIS 731

Tribunal File Number: AD-17-800

BETWEEN:

C. E.

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 13, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant completed high school and obtained a post-secondary certificate in building services. He has a long history of physically demanding work. He last worked as a school custodian, until he was hit by a pickup truck while on his motorcycle. He sustained a number of physical injuries and has mental health issues as a result. He applied for a Canada Pension Plan disability pension and claimed that he was disabled because of his ongoing injuries and mental illness resulting from this accident. The Respondent denied his application initially and on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On January 28, 2016, the Tribunal's General Division dismissed his appeal, finding that he was not disabled under the *Canada Pension Plan*. The Applicant filed an application for leave to appeal (Application) with the Tribunal's Appeal Division in February 2016. This application was refused. The Applicant applied for judicial review of this decision. On May 10, 2017, the Federal Court allowed the application and returned the matter to the Appeal Division for redetermination.

ANALYSIS

[2] The *Department of Employment and Social Development Act* (DESD Act) governs the operation of this Tribunal. 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.

[3] 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.

[4] The Applicant submits that the General Division based its decision on erroneous findings of fact under subsection 58(1) of the DESD Act and that it erred in law. I must decide whether these grounds of appeal have a reasonable chance of success on appeal.

[5] The Applicant contends that the General Division erred in law in its application of the legal principle set out in *Villani v. Canada (Attorney General)*, 2001 FCA 248. The legal principle in question indicates that when determining whether a claimant is disabled under the *Canada Pension Plan*, the decision-maker must consider the claimant's personal characteristics, including age, education, language skills, and work history. In this case, the Applicant argues that while the General Division acknowledged that the Applicant had undergone two extensive functional capacity assessments (in 2013 and 2015), it did not consider the entirety of the 2015 report. In particular, the 2015 report set out the Applicant's physical limitations, and also stated that he had intellectual limitations such that no alternate employment was identified for him to pursue. He argues that the General Division did not consider his intellectual limitations.

[6] Paragraph 8 of the General Division decision states that the 2015 report was accepted into evidence because it was relevant, even though the Applicant's representative had inadvertently filed it late with the Tribunal. Paragraph 35 summarizes this report, and states that the report concluded that the Applicant was substantially disabled from his pre-accident employment and any occupation for which he was suited by education, training, or experience.

[7] Since the General Division decision makes no mention of the statements in the 2015 report regarding the Applicant's intellectual limitations, it does not appear that this was considered. This points to an error of law, because all relevant personal characteristics, including intellectual abilities, should be considered. This ground of appeal has a reasonable chance of success on appeal.

[8] 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 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. The parties are not restricted to the ground of appeal considered in this decision at the hearing of this appeal.

[9] If the Applicant wishes to pursue arguments based on the *Canadian Charter of Rights and Freedoms*, he is reminded to comply with section 20 of the *Social Security Tribunal Regulations* and other pertinent legislative requirements.

CONCLUSION

[10] The Application is granted for the reasons set out above.

[11] 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