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

Citation: *M. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 733

Tribunal File Number: AD-17-923

BETWEEN:

M. S.

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 had worked for many years as a mattress builder. He stopped work due to ongoing pain and limitations in his shoulders. He also suffers from insomnia, mental illness, and problems with focus, concentration and memory that are secondary to his physical injuries. The Applicant applied for a Canada Pension Plan disability pension and claimed that he was disabled. The Respondent refused the application initially and on reconsideration. The Applicant appealed the reconsideration decision to the Social Security Tribunal of Canada (Tribunal). On October 26, 2017, the Tribunal's General Division determined that the Applicant was not disabled under the *Canada Pension Plan*. The Applicant filed an application for leave to appeal (Application) with the Appeal Division of the Tribunal on December 5, 2017.

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), namely 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 contends that the General Division erred in law because it failed to consider his personal characteristics as well as his medical conditions to decide whether he was disabled, as required by the Federal Court decision in *Villani v. Canada (Attorney General)*, 2001 FCA 248. Specifically, the Applicant argues that the General Division did not consider his inability to use computers, and the impact that his pain, concentration, memory and focus, or sleep deprivation has on his ability to secure and keep employment in the "real world."

[5] The decision sets out the Applicant's physical limitations and that he cannot use a computer. It also notes that the Applicant was not able to complete filing duties when he attempted to return to work at his last employer. However, although the decision lists the Applicant's limitations regarding sleep, focus, concentration and memory, these limitations do not appear to have been analyzed when the General Division made its decision. Paragraphs 45 to 48 of the decision consider the Applicant's shoulder pain and limitations. Paragraphs 44 and 50 analyze his mental illness (depression and anxiety). The decision does not appear to have addressed insomnia, or perhaps his focus, concentration and memory issues. This ground of appeal therefore points to an error of law and has a reasonable chance of success on appeal.

[6] It is also not clear whether the General Division considered the combined effect of all of the Applicant's conditions on his capacity regularly to pursue any substantially gainful occupation. The General Division concluded that there was no evidence to suggest that the Appellant had a psychological condition that would have prevented all work and that his only medical condition involved his shoulders and arms. Thus, it appears that the cumulative impact of the Applicant's multiple conditions may not have been considered, which would also be an error of law.

[7] 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 some grounds of appeal have a reasonable chance of success, I have not considered the remaining grounds of appeal that the Applicant has submitted. The parties are not, however, limited to the grounds of appeal considered in this decision.

CONCLUSION

[8] The Application is granted for these reasons

[9] 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