



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. C. v. Minister of Employment and Social Development*, 2017 SSTADIS 772

Tribunal File Number: AD-17-945

BETWEEN:

M. C.

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 28, 2017

DECISION AND REASONS

DECISION

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

OVERVIEW

[2] The Applicant, M. C., operated a courier business until May 2014. He has not worked since then due to back pain. He has been diagnosed with spondylolisthesis and facet joint arthritis. He underwent surgery in 2015 but it failed to alleviate his symptoms. The Applicant continues to suffer from chronic back pain. He has limitations with sitting or walking for any duration of time, and with lifting or carrying.

[3] The Applicant applied for a Canada Pension Plan disability pension in July 2015, but the Respondent, the Minister of Employment and Social Development, denied his claim. He appealed the Respondent's decision, but the General Division also determined that he was ineligible for a Canada Pension Plan disability pension, as it found that his disability was not "severe" by the end of his minimum qualifying period on December 31, 2009. (The end of an appellant's minimum qualifying period is the date by which he or she is required to be found disabled, to qualify for a Canada Pension Plan disability pension.)

[4] The Applicant now seeks leave to appeal the General Division's decision. I must decide whether the appeal has a reasonable chance of success.

ISSUE

[5] Does the appeal have a reasonable chance of success on any of the grounds that the Applicant has raised?

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*.¹

ANALYSIS

Availability of a Canada Pension Plan disability pension

[8] The Applicant argues that the criteria for a Canada Pension Plan disability pension are too rigorous and should be changed to make it easier to qualify for a disability pension. He argues that it should not operate like an insurance scheme and that he should qualify for a disability pension because he contributed for over 10 years to the Canada Pension Plan. He submits that the General Division's decision is unfair and that he should be entitled to a reassessment of his claim.

[9] The courts have determined that the Canada Pension Plan does in fact operate like an insurance scheme and that applicants must meet technical requirements in order to qualify for a disability pension under the *Canada Pension Plan*.

¹ *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[10] In *Miceli-Riggins v. Canada*,² the Federal Court of Appeal examined the objectives of the Canada Pension Plan. It wrote:

[69] [. . .] The Plan is not supposed to meet everyone's needs. Instead, it is a contributory plan that provides partial earnings- replacement in certain technically-defined circumstances. It is designed to be supplemented by private pension plans, private savings, or both. See *Granovsky v. Canada (Minister of Employment and Immigration)*, 2000 SCC 28 (CanLII), 2000 SCC 28 at paragraph 9, 2000 SCC 28 (CanLII), [2000] 1 S.C.R. 703.

[70] Indeed, it cannot even be said that the *Plan* is intended to bestow benefits upon demographic groups of one sort or another. Instead, it is best regarded as a contributory-based compulsory insurance and pension scheme designed to provide some assistance – far from complete assistance – to those who satisfy the technical qualification criteria.

[71] Like an insurance scheme, benefits are payable on the basis of highly technical qualification criteria.

[. . .]

[74] In the words of the Supreme Court,

The *Plan* was designed to provide social insurance for Canadians who experience a loss of earnings due to retirement, disability, or the death of a wage-earning spouse or parent. It is not a social welfare scheme. It is a contributory plan in which **Parliament has defined both the benefits and the terms of entitlement**, including the level and duration of an applicant's financial contribution.

(*Granovsky, supra* at paragraph 9.)

(My emphasis)

[11] The Canada Pension Plan operates like an insurance scheme, where entitlement is dependent on contributions. A disability pension is not available to everyone who has a disability. It is not enough to have made contributions to the Canada Pension Plan, or that an applicant is under financial strain. It is clear that an applicant must meet other requirements

² *Miceli-Riggins v. Canada (Attorney General)*, 2013 FCA 158.

in order to qualify for a disability pension under the Canada Pension Plan. The fact that the Applicant made contributions is alone insufficient.

[12] The Applicant suggests that the requirements should be changed to make it easier to qualify for a disability pension. I do not have any authority to amend the *Canada Pension Plan*. The Applicant's recourse in this regard, if any, lies elsewhere.

Reassessment

[13] The Applicant argues that each case should be assessed on its facts. He argues that the outcome is unfair and that his appeal should be reassessed.

[14] There is nothing before me to suggest that the General Division failed to consider the Applicant's particular circumstances. The General Division considered and analyzed the evidence, including the Applicant's testimony.

[15] Subsection 58(1) of the DESDA provides for only limited grounds of appeal. It does not allow for a reassessment or rehearing of the evidence: *Tracey, supra*.

[16] That said, I have reviewed this matter. In this case, the Applicant had to be found severely disabled by no later than December 31, 2009. There simply was no supporting medical evidence to establish that he was severely disabled by December 31, 2009. There were no medical opinions that addressed the issue of the severity of the Applicant's disability at the end of the minimum qualifying period.

[17] Furthermore, although it may not be reflected in the Applicant's earnings history, the Applicant demonstrated that he had the capacity regularly of pursuing a substantially gainful occupation after December 31, 2009. Despite his deteriorating back condition, the evidence before the General Division was that he had operated his own delivery business and did courier deliveries for approximately 50 hours per week.

Canada Revenue Agency disability tax credit

[18] The Applicant further argues that the General Division failed to consider the fact that he receives the Canada Revenue Agency disability tax credit. He claims that had it

done so, it would have necessarily determined that he is severely disabled for the purposes of the *Canada Pension Plan*.

[19] Although the Canada Revenue Agency has determined that the Applicant is disabled and qualifies for the disability tax credit, this is irrelevant to the determination of whether he qualifies for a Canada Pension Plan disability pension. The General Division is not bound by any determinations made by any other bodies, including the Canada Revenue Agency. The *Canada Pension Plan* strictly defines disability and the Applicant was still required to satisfy the General Division that he was severely disabled by December 31, 2009, the end of his minimum qualifying period.

CONCLUSION

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

Janet Lew
Member, Appeal Division