



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. S. J.*, 2017 SSTADIS 759

Tribunal File Number: AD-17-879

BETWEEN:

Minister of Employment and Social Development

Applicant

and

S. J.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Nancy Brooks

Date of Decision: December 20, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Applicant seeks leave to appeal the decision of the General Division of the Social Security Tribunal of Canada (Tribunal), dated August 16, 2017, which determined the Respondent was entitled to a disability pension under the *Canada Pension Plan* (CPP).

[2] Pursuant to s. 58(1) of the *Department of Employment and Social Development Act* (DESDA), there are only three grounds to appeal a General Division decision: first, a failure to observe a principle of natural justice or otherwise acting beyond or refusing to exercise jurisdiction; second, an error in law; and third, basing the decision on an erroneous finding of fact made in a perverse and capricious manner or without regard to the material before it. The use of the word “only” in s. 58(1) means that no other grounds of appeal may be considered: *Belo-Alves v. Canada (Attorney General)*, [2015] 4 FCR 108, 2014 FC 1100, at para. 72.

[3] An appeal to the Appeal Division may be brought only if leave to appeal is granted: DESDA, s. 56(1). According to s. 58(2) of the DESDA, leave to appeal is to be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success. Therefore, the issue before me on this application is whether the Applicant’s appeal has a reasonable chance of success.

[4] The leave to appeal proceeding is a preliminary step to an appeal on the merits. It presents a different and appreciably lower hurdle to be met than the one that must be met at the appeal stage: at the leave to appeal stage, an applicant is required to establish that the appeal has a reasonable chance of success on at least one of the grounds in s. 58(1) of the DESDA, whereas at the appeal stage, an applicant must prove his or her case on the balance of probabilities: *Kerth v. Canada (Minister of Human Resources Development)*, 1999 CanLII 8630 (FC). In the context of an application for leave to appeal, having a reasonable chance of success means having some arguable ground upon which the proposed appeal might succeed: *Osaj v. Canada (Attorney General)*, 2016 FC 115; *Canada (Minister of Human Resources Development) v. Hogervorst*, 2007 FCA 41.

BACKGROUND

[5] The Respondent applied for a disability pension under the CPP. A medical report (Medical Report) completed by the Respondent's physician was sent to the Applicant and was date-stamped as received on April 23, 2014. Following receipt of the Medical Report, the Applicant wrote to the Respondent to advise her it had not yet received a completed disability application and that it required a completed application. The Respondent sent a CPP application form for disability benefits, which was date-stamped as received on November 28, 2014.

[6] The Applicant denied the application for disability benefits initially and upon reconsideration. The Respondent then appealed to the General Division.

[7] In his decision allowing the appeal, the General Division member found that the Respondent's disability was severe and prolonged within the meaning of the CPP. He determined that her disability pension payments should start as of May 2013.

[8] With respect to the start date of payment of the pension, the member stated at para. 81 of the reasons:

For payment purposes, a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2)(b) of the CPP). The application was received in April 2014. The Appellant is deemed disabled in January 2013. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of May 2013.

[9] The General Division decision was issued on August 16, 2017. The Applicant wrote to the Tribunal on September 8, 2017, to request that a *corrigendum* be issued to correct errors that the Applicant contended were made by the General Division member concerning the effective payment date of the disability pension. In his letter, the Applicant's representative stated:

In its decision, the SST-GD determined that the Appellant became disabled within the meaning of the *Canada Pension Plan (CPP)* on or before her Minimum Qualifying Period of December 2013. The Respondent is not contesting the SST-GD's determination that the Appellant is disabled.

The SST-GD decision incorrectly noted the date of application as being April 2014, as a result, the deemed date of disability and the effective payment date will need to be re-calculated.

Accordingly, the Respondent requests that the SST-GD issue an amended decision (in other words, a *corrigendum*) to correct the date of application, the deemed date of disability and the effective payment date.

For greater certainty, the Respondent submits that the correct date of application is **November, 2014**. After applying section 42(2)(b) of the *CPP*, the Appellant is deemed disabled in **August 2013**. Pursuant to section 69 of the *CPP*, payments would commence four months later, in **December, 2013**. [bold text in original]

[10] The General Division member refused to make the requested *corrigendum*. In a letter dated September 28, 2017, the Tribunal advised the parties as follows:

The Tribunal member assigned to the above-noted file has decided that no correction(s) will be made to the decision for the following reason(s):

The Tribunal decision determined the date of application as being April 23 2014 based upon the date of receipt of a medical report for CPP disability benefits. The Respondent [the Applicant on the within application] set out in its request that the correct date of application is November 18 2014.

In this case the Appellant [the Respondent on the within application] sent in a medical report containing much of the personal and identifying information required for an application (sections 43, 52, 60 and 68 CPP Regulations). In a letter dated May 27, 2014, the Respondent sent a letter to the Appellant setting out that it required a completed disability application within 30 days. This identified the medical report as initiating a request for a disability benefit.

The Respondent sent out two further correspondences on July 7, 2014 and October 31, 2014 allowing the Appellant to file the required information which she filed.

The recent case of *Mason v. Canada (Employment and Social Development)*, 2017 FC 358 sets out that the meaning of the provision with respect to “making” an application must be considered against the purpose of the provision and the legislation, which is to be given a fair and generous reading.

DISCUSSION

[11] The Applicant takes no issue with the General Division's decision to grant the Respondent a disability pension. However, the Applicant submits that the General Division committed an error of law within s. 58(1)(b) of the DESDA by treating the Medical Report as the application for disability benefits and using the date the Applicant received this report—April 23, 2014—as the basis for calculating the deemed date of disability and the effective payment date. The Applicant contends that because the General Division committed this error, the deemed date of disability and the effective payment date were wrong and, instead, they should have been calculated based on November 18, 2014, the date it received the Respondent's CPP application form.

[12] Under s. 60 of the CPP, a benefit is not payable unless an application has been made and the benefit approved. Subsections 43(1) and 52(1) and s. 68 of the *Canada Pension Plan Regulations* (CPP Regulations) stipulate the information that must be provided by a claimant in order to determine eligibility for the benefit. The Applicant submits that the Medical Report was missing some of the information required under the CPP Regulations and, accordingly, the application form received on November 18, 2014, should be considered as the application in order to calculate the start date of payment of benefits.

[13] It is not my role at the leave stage to evaluate the merits of the Applicant's claims. Here, the Applicant has raised an issue with respect to the General Division's determination of what constituted the application for disability benefits for the purpose of calculating the start date of payment of the Respondent's disability pension which could, if proven, constitute an error of law. I am satisfied that the Applicant has raised an arguable case with respect to an error of law falling within the ambit of s. 58(1)(b) of the DESDA.

DISPOSITION

[14] The application for leave to appeal is granted.

[15] In accordance with s. 58(5) of the DESDA, the application for leave to appeal hereby becomes the notice of appeal. Within 45 days after the date of this decision, the parties may file

submissions with the Appeal Division or file a notice with the Appeal Division stating that they have no submissions to file: *Social Security Tribunal Regulations*, s. 42.

Nancy Brooks
Member, Appeal Division