



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *V. V. v. Minister of Employment and Social Development*, 2018 SST 132

Tribunal File Number: AD-17-533

BETWEEN:

V. V.

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: February 6, 2018

DECISION AND REASONS

DECISION

[1] Leave to appeal is granted.

OVERVIEW

[2] V. V. (Claimant) worked for a number of years. He began receiving a Canada Pension Plan disability pension in 1999 on the basis of having end-stage kidney disease. He subsequently suffered a heart attack and had a kidney transplant. The Claimant returned to the paid workforce in 2006, less than one year after the kidney transplant. In 2015, the Minister of Employment and Social Development (Minister) reviewed the matter and decided that the Claimant ceased to be disabled at the end of April 2007. The Claimant appealed this decision to the Tribunal. The Tribunal's General Division dismissed the appeal. Leave to appeal is granted because the General Division may have erred by not considering the Claimant's personal circumstances or not considering whether his medical condition had improved such that he regained capacity to work.

ISSUES

[3] I must decide whether there is a reasonable chance that the appeal may succeed based on the following:

- a) the General Division failed to consider all of the Claimant's personal circumstances;
- b) the General Division failed to decide whether the Claimant's medical condition had improved such that he had regained capacity to work; or
- c) the General Division failed to fully consider whether the Claimant worked for a benevolent employer.

ANALYSIS

[4] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides for only three, narrow grounds of appeal, namely that the

General Division failed to observe the principles of natural justice or made a jurisdictional error, 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.¹ Furthermore, leave to appeal is to be refused if the appeal has no reasonable chance of success². The Claimant's arguments must be considered in this context.

Issue 1: The Claimant's Personal Circumstances

[5] The Federal Court teaches that to decide whether a claimant is disabled under the *Canada Pension Plan* (CPP), their personal circumstances, including age, education, language skills, and work and life experience must be considered.³ In fact, it is an error in law not to examine a claim in this way.⁴ The General Division decision does not analyze whether the Claimant is disabled in light of his personal circumstances. The analysis focusses, instead, on the Claimant's continued part-time employment and his income. This argument suggests that the General Division erred in law, and so leave to appeal should be granted.

Issue 2: Improvement in the Claimant's Medical Condition

[6] The Claimant also argues that the General Division erred in law because it failed to consider whether the Claimant's kidney disease had improved to such an extent that he regained capacity regularly to pursue any substantially gainful work.⁵ This argument is based on a decision by the Pension Appeals Board.⁶ This decision is not binding on this Tribunal; however, it may be persuasive. I am satisfied that the General Division's failure to consider this decision may have been an error in law. This issue bears further consideration on appeal.

¹ Subsection 58(1) of the DESD Act.

² Subsection 58(2) of the DESD Act.

³ *Villani v. Canada (Attorney General)*, 2001 FCA 248

⁴ *Garrett v. Canada*, 2005 FCA 84

⁵ *Boudreau v. Minister of Human Resources Development*, 2000 CP 11626 (PAB).

⁶ *Ibid.*

Issue 3: Benevolent Employer

[7] The Claimant also presents other grounds of appeal. However, because I have found that the grounds of appeal considered above may have a reasonable chance of success on appeal, I need not consider the remaining ground of appeal.⁷

CONCLUSION

[8] Leave to appeal is granted for the reasons set out above.

[9] The parties are not restricted, on appeal, to the grounds considered in this decision.

[10] The legal test to obtain leave to appeal is easier to meet than the legal test to succeed on appeal. 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

REPRESENTATIVES:	Bernie Romano, for the Claimant
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⁷ *Mette v. Canada (Attorney General)*, 2016 FCA 276