

Federal Court



Cour fédérale

Date: 20220518

Docket: T-553-20

Citation: 2022 FC 741

Ottawa, Ontario, May 18, 2022

PRESENT: The Honourable Mr. Justice Fothergill

BETWEEN:

RYAN WAYNE LEGAULT

Applicant

and

ATTORNEY GENERAL OF CANADA

Respondent

JUDGMENT AND REASONS

I. Overview

[1] Wayne Legault seeks judicial review of a decision of the Appeal Division [Appeal Division] of the Social Security Tribunal [SST]. The Appeal Division refused to grant leave to appeal a decision of the General Division [General Division] of the SST. The General Division confirmed the determination of the Minister of Employment and Social Development [Minister]

that Mr. Legault was not eligible for a disability pension under the *Canada Pension Plan*, RSC 1985, c C-8 [CPP].

[2] The Minister refused Mr. Legault's application for a disability pension because he was unable to demonstrate his disability was "severe and prolonged" before the end of his minimum qualifying period [MQP], as defined by the CPP. Mr. Legault requested reconsideration, and submitted a letter from his doctor advising that he was permanently disabled from work. Mr. Legault acknowledged that he had worked during the MQP for financial reasons, but said his disability prevented him from fully performing the duties required of his position.

[3] The General Division refused Mr. Legault's appeal of the Minister's decision on September 4, 2018. The Appeal Division refused leave to appeal on April 20, 2020, finding that the appeal had no reasonable chance of success.

[4] Mr. Legault represented himself in this application for judicial review, assisted by his father-in-law. Counsel for the Minister did not object to Mr. Legault's father-in-law providing him with support, and occasionally prompting him in his submissions to the Court.

[5] Not everyone with a health problem who has some difficulty finding and keeping a job is entitled to a disability pension. Claimants must demonstrate they suffer from a "serious and prolonged disability" that renders them incapable of regularly pursuing any substantially gainful occupation during the MQP.

[6] The General Division reasonably found that the medical evidence submitted by Mr. Legault did not rise to the level of proving a serious and prolonged disability. Mr. Legault was capable of regularly pursuing a substantially gainful occupation throughout his MQP. Having found that the appeal had no reasonable chance of success, the Appeal Division had no choice but to refuse leave to appeal.

[7] The application for judicial review is dismissed.

II. Background

[8] Mr. Legault was employed as a part-time hospital service worker from June 2010 until January 2014. He says that he stopped working because of hypertrophic cardiomyopathy, hemorrhoids and a periumbilical hernia.

[9] The calculation of the MQP is based on a claimant's contributions to the CPP. The General Division found that Mr. Legault's MQP ended on December 31, 2012, or on a possible prorated date of January 31, 2013.

[10] Mr. Legault suffers from a congenital heart defect that was not diagnosed until 2015. It was detected during a screening for hemorrhoid surgery. Mr. Legault explained that many of the symptoms he experienced, such as fatigue, shortness of breath, and weight gain, were attributable to his heart condition. He said the symptoms existed in 2012 and worsened in 2013, and he was unable to work without serious limitations. He did not seek medical attention at the

time, because he did not recognize that his symptoms could be linked to a deeper issue. He eventually sought help in 2014, when the debilitating pain from his hemorrhoids and hernia prompted him to see a doctor.

[11] The General Division accepted Mr. Legault's evidence that he had undergone pacemaker surgery in 2016, but he continued to experience heart palpitations and fainting spells in 2017. His doctor described his mobility as limited, and reported that he was unable to carry or lift objects. This rendered him incapable of working effectively. Mr. Legault continued to suffer from complications, as documented in medical notes. However, the General Division found that the doctor's report from 2017 and the other medical evidence were dated long after Mr. Legault's MQP expired around the end of 2012.

[12] The General Division found Mr. Legault to be credible, and to have a complicated medical history that rendered him unable to work for a number of years. However, the General Division concluded there was no evidence that Mr. Legault was suffering from a severe and prolonged disability that precluded him from pursuing substantially gainful work during and before the end of the MQP. On the contrary, the evidence confirmed that Mr. Legault retained the capacity to work throughout the MQP, despite his health difficulties.

[13] On April 20, 2020, the Appeal Division denied Mr. Legault's application for leave to appeal the General Division's decision, citing the grounds enumerated in s 58(1) of the *Department of Employment and Social Development Act*, SC 2005, c 34 [DESDA].

III. Issue

[14] The sole issue raised by this application for judicial review is whether the Appeal Division's refusal to grant leave to appeal the General Division's decision was reasonable.

IV. Analysis

[15] The Appeal Decision's refusal to grant leave is subject to review by this Court against the standard of reasonableness (*Parks v Canada (Attorney General)*, 2020 FCA 91 at para 7, citing *Canada (Minister of Citizenship and Immigration) v Vavilov*, 2019 SCC 65 [*Vavilov*] at para 83). The Court must consider the outcome of the administrative decision in light of its underlying rationale, and ensure that the decision is transparent, intelligible and justified (*Vavilov* at para 15). In conducting reasonableness review, the Court must evaluate an administrative decision maker's reasons in light of its expertise, experience, and specialized knowledge (*Vavilov* at paras 92-94).

[16] In order to be eligible for a disability pension, a claimant must demonstrate a "severe and prolonged mental or physical disability" as defined in ss 42(2)(a) and (b) of the CPP. A disability is severe where the individual is incapable of pursuing "any substantially gainful occupation" (CPP, s 42(2)(a)(i)). A disability is prolonged where it is "likely to be long continued and of indefinite duration or is likely to result in death" (CPP, s 42(2)(a)(ii)).

[17] Subsection 42(2) of the CPP prescribes a complicated formula for determining a claimant's MQP. Mr. Legault does not dispute the Minister's determination, confirmed by the General Division and Appeal Division, that his MQP ended on December 31, 2012, or on a possible prorated date of January 31, 2013.

[18] The General Division may dismiss an appeal from the Minister's decision, or confirm, rescind or vary the Minister's decision in whole or in part, or give the decision that the Minister should have given (DESDA, s 54(1)). The Appeal Division may entertain an appeal on only three grounds: (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.

[19] Leave to appeal must be refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success (DESDA, s 58(2)).

[20] Mr. Legault says that his cardiomyopathy was a pre-existing condition during the MQP. He argues that neither the General Division nor the Appeal Division questioned this assertion, and it was therefore an error not to assess how his pre-existing condition may have caused him to have a disability during the MQP.

[21] Mr. Legault relies on this Court's decision in *Karadeolian v Canada (Attorney General)*, 2016 FC 615 [*Karadeolian*] at paragraph 10, where Justice Robert Barnes held that the Appeal Division's assessment of disability should be neither mechanical nor perfunctory. Rather, the Appeal Division should review the underlying record and determine whether the General Division failed to properly account for any of the evidence. Where a party is unrepresented, the Appeal Division should assess the medical evidence to see if anything important has been overlooked or misconstrued (*Karadeolian* at para 10).

[22] Mr. Legault also submits that the Appeal Division failed to recognize that the General Division had applied an overly strict standard in determining "severity". He argues that the CPP does not require a claimant to be entirely incapable of working. Rather, the analysis must be performed in a "real world" context. The question is whether the claimant is unable to regularly pursue any substantially gainful occupation (citing *Villani v Canada (Attorney General)*, [2002] 1 FC 130 [*Villani*] at para 38).

[23] Mr. Legault asserts that the General Division's acknowledgement that he retained only "some" capacity for substantially gainful work is an admission that he was suffering from serious limitations during the MQP due to his health.

[24] The Minister responds that the CPP's definition of disability is highly restrictive. Claimants must demonstrate they had a severe and prolonged disability before the end of their MQP, and that they were incapable of regularly pursuing any substantially gainful occupation. It is a claimant's capacity to work, rather than a medical diagnosis, that defines the severity of a

disability (citing *Kinsella v Canada (Attorney General)*, 2019 FC 429 at para 33). In order to demonstrate an inability to pursue any regular and substantially gainful occupation, a claimant must also show that efforts were made to obtain and maintain employment, and that these were unsuccessful because of health conditions or impairments (citing *Inclima v Canada (Attorney General)*, 2003 FCA 117 [*Inclima*] at para 3).

[25] The Minister agrees that the analysis of a claimant's capacity to obtain and maintain employment must be performed in a "real world" context that accounts for the particular claimant's age, education level, language proficiency, past work and life experience (citing *Villani* at para 50).

[26] The General Division noted that Mr. Legault was 37 at the time of his MQP, he is fluent in English, he is a high school graduate, and he has a certification as a health care aide. The General Division found that only some of his skills were transferrable, given the uniformity of his work experience as an orderly. However, Mr. Legault did not seek lighter work alternatives and continued to work as a health care aide until 2014, when he found other work with a company cleaning filters. The Minister therefore maintains that the General's Division's conclusion that Mr. Legault retained "some capacity to work" at the time of the MQP was well-supported by the evidence, and the Appeal Division's refusal to grant leave was reasonable.

[27] I am not persuaded that the Appeal Division overlooked or misconstrued any of the medical evidence provided by Mr. Legault, or applied an overly strict definition of what constitutes a severe and prolonged disability. Both the General Division and the Appeal Decision

acknowledged that Mr. Legault's medical difficulties are real and have a serious impact on his health. However, both tribunals are limited by statutory constraints. The medical evidence indicated that Mr. Legault was not disabled from working until some time after the end of his MQP. His undiagnosed heart condition did not rise to the level of a severe and ongoing disability during the MQP.

[28] The Federal Court of Appeal has confirmed that not everyone with a health problem who has some difficulty finding and keeping a job is entitled to a disability pension. Claimants must still demonstrate that they suffer from a "serious and prolonged disability" that renders them "incapable regularly of pursuing any substantially gainful occupation". Sufficient medical evidence is required, as is evidence of employment efforts and possibilities (*Inclima* at para 3, citing *Villani* at para 50).

[29] The earliest medical evidence suggesting that Mr. Legault was experiencing medical difficulties was a computerized tomography [CT] scan conducted in 2014 that revealed the presence of a small hernia. The evidence subsequently provided of the undiagnosed heart condition did not alter the fact that Mr. Legault was capable of regularly pursuing a substantially gainful occupation throughout his MQP.

[30] Mr. Legault takes issue with the finding of the General Division that he failed to demonstrate sufficient efforts to find and maintain alternate employment. However, his work as a health care aide and his job cleaning filters were both physical occupations. The General Division reasonably found there was nothing to indicate Mr. Legault ever sought a position that

consisted of lighter or less physically onerous duties. Furthermore, this question is important only when a claimant has not been gainfully employed. Mr. Legault remained gainfully employed as a health care aide throughout his MQP.

[31] The Appeal Division reasonably found that Mr. Legault's appeal had no reasonable chance of success. It therefore had no choice but to refuse leave to appeal.

V. Conclusion

[32] The application for judicial review is dismissed. The Minister does not seek costs, and accordingly none are awarded.

JUDGMENT

THIS COURT'S JUDGMENT is that the application for judicial review is dismissed without costs.

"Simon Fothergill"

Judge

FEDERAL COURT
SOLICITORS OF RECORD

DOCKET: T-553-20

STYLE OF CAUSE: RYAN WAYNE LEGAULT v ATTORNEY GENERAL
OF CANADA

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PRAIRIE, MANITOBA, CHARLOTTETOWN, PRINCE
EDWARD ISLAND AND OTTAWA, ONTARIO

DATE OF HEARING: APRIL 20, 2022

JUDGMENT AND REASONS: FOTHERGILL J.

DATED: MAY 18, 2022

APPEARANCES:

Ryan Wayne Legault
(on his own behalf)

FOR THE APPLICANT

Sandra Doucette

FOR THE RESPONDENT

SOLICITORS OF RECORD:

Attorney General of Canada
Gatineau, Quebec

FOR THE RESPONDENT