



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *JL v Minister of Employment and Social Development*, 2020 SST 1220

Tribunal File Number: GP-20-259

BETWEEN:

**J. L.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Virginia Saunders

DATE OF DECISION: August 7, 2020

## REASONS AND DECISION

### DECISION

[1] I am summarily dismissing the appeal, because it has no reasonable chance of success.

### OVERVIEW

[2] The Claimant, J. L., was receiving a *Canada Pension Plan* (CPP) disability pension. When the Claimant turned 65 in November 2018, the Minister of Employment and Social Development (the Minister) stopped paying the disability pension. In December 2018, the Minister started paying the Claimant a CPP retirement pension. The retirement pension was less than what the Claimant had received for his disability pension. He asked the Minister to reconsider. The Minister maintained that the amount was correct. The Claimant appealed to the General Division of the Social Security Tribunal (Tribunal).

### DOES THE APPEAL HAVE A REASONABLE CHANCE OF SUCCESS?

[3] The Tribunal has to summarily dismiss an appeal if satisfied it has no reasonable chance of success.<sup>1</sup> An appeal has no reasonable chance of success if it is bound to fail, regardless of the evidence or arguments the Claimant might bring to a hearing.<sup>2</sup> Summary dismissal means the appeal is dismissed without a hearing.

[4] I gave the Claimant notice in writing that I intended to summarily dismiss his appeal. He had until August 4, 2020, to provide reasons why I should not do that.<sup>3</sup> He did not respond to the notice.

### **The law required the Claimant's disability pension to end**

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<sup>1</sup> Subsection 53(1) *Department of Employment and Social Development Act*; *Miter v. Canada (A.G.)*, 2017 FC 262

<sup>2</sup> *L. W. v. Minister of Employment and Social Development*, 2017 SSTADIS 527

<sup>3</sup> Notice of Intention to Summarily Dismiss, June 24, 2020, GD0

[5] The CPP says a person cannot receive a disability pension after they turn 65.<sup>4</sup> When that happens, they are deemed to have applied for a retirement pension.<sup>5</sup> That is why the Claimant's disability pension ended in November 2018, and his retirement pension started the next month.

### **The Claimant's CPP retirement pension was calculated correctly**

[6] A person's CPP retirement pension will always be less than their disability pension. That is because the pensions are calculated differently. The retirement pension is a percentage of the person's "average monthly pensionable earnings". These are earnings from employment and self-employment.<sup>6</sup> The Claimant's pensionable earnings are shown in the statement at page GD2-4 in the Tribunal file. This statement is part of the Claimant's Record of Earnings.

[7] The Minister explained how they determined the Claimant's retirement pension.<sup>7</sup> They used the figures in the Claimant's Record of Earnings, adjusted to current values. The Claimant argues that he has other earnings that should be included, but the Minister verified with Canada Revenue Agency (CRA) that the Record of Earnings was correct.<sup>8</sup> Unless the Minister revises the Record of Earnings, it cannot be called into question more than four years after an entry has been made.<sup>9</sup>

[8] The Minister did not revise the Claimant's Record of Earnings because there was no new information to justify a change. I do not have authority to direct the Minister to make a revision. Even if I did, I would not. There is no evidence that one should be made.

[9] In calculating the Claimant's retirement pension, the Minister used the formula set out in the CPP.<sup>10</sup> The Claimant offered no evidence that the calculation was incorrect.

### **The Claimant did not raise a constitutional issue**

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<sup>4</sup> Paragraph 44(1)(b), subsection 70(1) *Canada Pension Plan*

<sup>5</sup> Subsection 70(2) *Canada Pension Plan*

<sup>6</sup> Section 2 and subsection 46(1) *Canada Pension Plan*

<sup>7</sup> GD2-5-8

<sup>8</sup> GD2-9-11

<sup>9</sup> Section 97 *Canada Pension Plan*

<sup>10</sup> Section 46 *Canada Pension Plan*

[10] In his notice of appeal, the Claimant alleged discriminatory treatment by Canada Revenue Agency and Service Canada.<sup>11</sup> The Tribunal can consider constitutional issues – including arguments that a person’s rights have been violated – but only if the issue concerns the validity, applicability, or operability of the CPP or other legislation under the Tribunal’s authority.<sup>12</sup> The Claimant did not allege any violation of his rights that the Tribunal has the power to consider.

## CONCLUSION

[11] The Tribunal is created by statute and only has the powers granted to it by its governing legislation. In this case, those powers are limited to determining if the Minister followed the law when they stopped paying the Claimant’s disability pension and started his retirement pension, and whether they calculated the pension amount according to the CPP. I cannot disregard the law for compassionate reasons or other extenuating circumstances. As a result, the appeal has no reasonable chance of success.

[12] The appeal is summarily dismissed.

Virginia Saunders  
Member, General Division - Income Security

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<sup>11</sup> GD1-5,7, 25

<sup>12</sup> Section 20 *Social Security Tribunal Regulations*