



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *LL v Minister of Employment and Social Development*, 2021 SST 9

Tribunal File Number: AD-20-846

BETWEEN:

**L. L.**

Appellant  
(Claimant)

and

**Minister of Employment and Social Development**

Respondent  
(Minister)

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Neil Nawaz

DATE OF DECISION: January 19, 2021

## REASONS AND DECISION

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] The Claimant was formerly a recipient of the Canada Pension Plan (CPP) disability pension. When the Claimant turned 65 in March 2020, the Minister stopped the disability pension and began paying her a retirement pension the following month. The amount of the retirement pension was less than what the Claimant had been receiving as a disability pension. The Claimant asked the Minister to reconsider the change, but the Minister maintained that the new amount was correct. The Claimant appealed to the General Division of the Social Security Tribunal.

[3] In a decision dated November 6, 2020, the General Division summarily dismissed the Claimant's appeal because it was not satisfied that the appeal had a reasonable chance of success.

[4] The Claimant is now appealing the summary dismissal to the Tribunal's Appeal Division. In her notice of appeal, she expressed disagreement with the General Division's decision and made the following points:<sup>1</sup>

- She has exhausted her resources and is in need of financial assistance;
- The CPP disability benefit is administered by a self-regulated body and is reinstated when somebody reaches 65 years of age;
- Contributors to the CPP have the choice to collect retirement benefits earlier or later, and they can continue work after they retire;
- Unlike other benefits that are based on factors such as income, the CPP disability pension is steadfast; and

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<sup>1</sup> See Claimant's notice of appeal dated November 26, 2020 (AD01) and a follow-up letter dated December 22, 2020 (AD02).

- There should be a carry-forward of excess amounts when a disability pension transitions to a retirement pension.

[5] In this case, I decided that an oral hearing was unnecessary. I proceeded on the basis of the existing documentary record because I saw no gaps in the file or need for clarification.

## ISSUES

[6] There are only three grounds of appeal to the Appeal Division. A claimant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.<sup>2</sup>

[7] The issues before me are as follows:

Issue 1: Did the General Division apply the correct test for a summary dismissal?

Issue 2: Do any of the Claimant's allegations against the General Division have merit?

## ANALYSIS

### **Issue 1: Did the General Division apply the correct test for summary dismissal?**

[8] I am satisfied that the General Division used the appropriate mechanism to dispose of the Claimant's appeal. In paragraph 3 of its decision, the General Division correctly cited the provision that permits it to summarily dismiss an appeal that has no reasonable chance of success.<sup>3</sup> However, I acknowledge that it is insufficient to simply cite legislation without properly applying it to the facts.

[9] The Federal Court of Appeal has determined that the threshold for summary dismissal is very high.<sup>4</sup> It is not appropriate to consider the merits of a case in the parties' absence and then find that the appeal cannot succeed. The question to be asked is whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the appeal must be dismissed after considering the facts, the case law, and the parties' arguments. Rather, the

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<sup>2</sup> The formal wording for these grounds of appeal is found in s. 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>3</sup> DESDA, s. 53(1).

<sup>4</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

question is whether the appeal is destined to fail regardless of evidence or arguments that might be submitted at a hearing.<sup>5</sup>

[10] In this case, the Claimant's earnings and contributions were not at issue. Her CPP disability pension was converted into a retirement pension when she turned 65. Since section 70 of the *Canada Pension Plan* mandates just such a conversion, the General Division correctly applied a high threshold when it found that the appeal had "no reasonable chance of success." For reasons that I will explain below, it was plain and obvious that the Claimant's arguments were bound to fail.

**Issue 2: Do any of the Claimant's allegations against the General Division have merit?**

[11] I have reviewed the record and considered the Claimant's written submissions. I have concluded that none of the Claimant's reasons for appealing justify overturning the General Division's decision.

***The Claimant appears to be misinformed about how the CPP works***

[12] The Claimant appears to have a limited understanding of the CPP's meaning, nature, and purpose. Contrary to her submissions, no part of the disability pension carries forward to the retirement pension. The CPP is not run by a self-regulated body but by an agency of the federal government, which is supposed to administer it in accordance with the provisions of the *Canada Pension Plan* and other relevant legislation. CPP eligibility is not based on an applicant's financial need but on their contributions to the plan over the course of their working life. It is true, as the Claimant says, that CPP contributors have the right to choose when they receive their retirement pension, but that right is subject to restrictions (it can't be exercised earlier than age 60 or later than age 70) and, in any case, it is not available to persons who are already receiving a disability pension.

***Disagreement with the General Division's decision is not a permitted ground of appeal***

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<sup>5</sup> *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; and *Breslaw v Canada (Attorney General)*, 2004 FCA 264.

[13] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the three grounds of appeal permitted under the law.

[14] In this case, I see no indication that the General Division ignored relevant evidence or misconstrued the applicable law. The Claimant was found to be disabled according to the applicable legislation, but that legislation also specified when her disability pension would be coming to an end. The General Division had no power to vary the end date.

[15] The *Canada Pension Plan* is clear. Section 70(1)(a) says that no one can receive a regular disability pension after they turn 65. When they do, recipients are deemed under section 70(2) to have applied for a retirement pension. That is why the Claimant's disability pension ended in March 2020 and why her retirement pension started the next month. The General Division determined that the Minister had done nothing wrong when it converted the Claimant's disability pension into a retirement pension. I do not see how, in making this determination, the General Division erred in law.

[16] The General Division then examined the method by which the Minister calculated the Claimant's retirement pension, which was significantly lower than what she had been receiving for as a disability pension. Again, the General Division found nothing to suggest that the Claimant's retirement pension was determined incorrectly.

[17] I see no indication that the General Division erred in law or fact when it endorsed the Minister's calculation of her pension. A person's CPP retirement pension will always be less than their disability pension. That is because the two pensions are calculated using different formulas. The retirement pension is a percentage of a person's average monthly pensionable earnings from employment and self-employment. The disability pension consists of 75 percent of the retirement pension amount plus a flat rate amount that is not a component of the retirement pension.<sup>6</sup> The Claimant has never argued that the Minister used the wrong formula to calculate her retirement pension, nor has she ever questioned the numbers in her record of earnings and

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<sup>6</sup> *Canada Pension Plan*, ss 56 and 59.2.

contributions that were used to make that calculation.<sup>7</sup> The General Division saw nothing to suggest that the Claimant's retirement pension was calculated incorrectly, and neither do I.

[18] An appeal to the Appeal Division is not an opportunity for an applicant to re-argue their case and ask for a different outcome. While the General Division did not arrive at the conclusion that the Claimant would have preferred, I cannot, as a member of the Appeal Division, ignore the law and award a retirement pension based solely on what I happen to think is fair.

**CONCLUSION**

[19] The Claimant has not shown that the General Division committed any errors when it determined that her retirement pension was calculated correctly.

[20] The appeal is therefore dismissed.



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Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVES:	Violeta Ventura, for the Claimant Samaneh Frounchi, for the Minister

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<sup>7</sup> Claimant's record of earnings and contributions, GD2-5.