



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *GC v Minister of Employment and Social Development*, 2020 SST 1241

Tribunal File Number: GP-20-883

BETWEEN:

G. C.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Virginia Saunders

Date of decision: December 14, 2020

DECISION

[1] G. C. is the Claimant. I am allowing his appeal. Payment of his *Canada Pension Plan* (CPP) retirement pension starts as of January 2020.

OVERVIEW

[2] The Claimant filled out an application for a CPP retirement pension on December 3, 2019.¹ He said he wanted payment to start as soon as he qualified.² His friend, S. P., says she mailed the application to Service Canada in X, Nova Scotia the next day.³ Service Canada stamped the application as received on March 16, 2020. The Minister of Employment and Social Development (the Minister) started paying the Claimant's pension in April 2020.

[3] The Claimant thinks his payments should have started sooner. He says Service Canada probably received the application earlier than the date stamp indicated. The Claimant asked the Minister to reconsider its decision about the start date. The Minister refused to change the decision. The Minister insisted that it did not receive the application until March 2020. The Claimant appealed to the Social Security Tribunal.

WHAT I HAVE TO DECIDE

[4] For a person who is under 65, there are three possibilities for when payment of their retirement pension starts. The CPP says the pension is payable starting with the latest of:

- the month the applicant reached age 60;
- the month after the application was received, and
- the month the applicant chose in their application.⁴

[5] In the Claimant's case, the relevant dates are:

- the month he reached age 60 was August 2019;
- the month after the application was received was January 2020 or April 2020, depending on whether I accept the Claimant's argument or the Minister's;

¹ GD2-5-10

² Gd2-6

³ GD1-2; GD7-1

⁴ Paragraphs 67(3.1)(a), (b) and (d) *Canada Pension Plan*

- the month the Claimant chose in his application was August 2019, because that is the earliest he would qualify.

[6] The latest possible start date is the month after the Claimant's application was received. I have to decide when that happened.

THE REASONS FOR MY DECISION

[7] I have decided the Claimant's application was received in December 2019. His payments start in January 2020. I reached that decision by considering the following:

The law is not clear about where the application has to be received

[8] The CPP does not say where a retirement pension application has to be received. The CPP and the *CPP Regulations* sometimes talk about an application being "made." Sometimes they talk about it being "received." They do not define either term. In the case of a retirement pension application, I can't see any difference between the two. So in deciding when the Claimant's application was received, I also considered what the CPP and the *CPP Regulations* say about how an application is made. They used to say an application had to be made in writing at an ESDC office. That changed in December 2018. Now the application is made by submitting it to the Minister in writing.⁵ The law does not say where.

[9] A person could argue that this change was made for a reason. One reason would be to remove any disadvantage to applicants who can't stand in line at Service Canada to deliver their applications in person, or can't submit applications on-line. By mailing the application, they have done all they can to get it to Service Canada. It makes sense to relieve them of the risk of any delays after that.⁶ However, I do not have to decide this issue. I have assumed for the purposes of this decision that the CPP requires the application to actually be received by Service Canada.

The Claimant's application was received by Service Canada in December 2019

⁵ Subsection 43(1) of the *CPP Regulations*; SOR/2018-281, s.2(1)

⁶ In *Mason v. Minister of Employment and Social Development*, 2017 FC 358, the Federal Court suggested that delivery to Canada Post as agent for Canada might constitute delivery to ESDC.

[10] I find it is more likely than not that the Claimant's application was mailed on December 4, 2019, and received by Service Canada on December 16, 2019.

[11] The CPP does not say an application has to be stamped in order to be received. Nor does it say the date stamp proves when the application was received. The Tribunal has to decide when an application was sent and when it was received. I can base my decision on the evidence heard, the documents filed, and on the basis of presumptions. My findings have to be on a balance of probabilities – that is, more likely than not.⁷

[12] The Claimant and S. P. both said he completed the application and signed it in early December. The date on the application is December 3. S. P. said she took the application to work with her the next day and gave it to the employee at the post office in X, Nova Scotia.⁸ The Minister did not challenge these statements. They are plausible. I think it is unlikely that someone would take the time to complete an application for benefits, and then let three months go by before mailing it. So I accept this evidence as true and accurate.

[13] Mail usually takes 10 days to be delivered in Canada. December 16 was the first business day after 10 days had passed from when S. P. mailed the application. I have no reason to think the Claimant's application was delayed by Canada Post. It was being delivered within Nova Scotia, and reached its intended destination.

[14] The Service Canada date stamp is often an accurate indication of when a document is received, but not always. In this case, I have evidence that the Claimant signed and mailed his application in early December 2019. I have no reason to think it was delayed by Canada Post. I have to weight those considerations against the Minister's evidence of how Service Canada handles incoming mail at its office in X.⁹

[15] The mail is delivered by about 9:00 each morning. It is opened, stamped and sorted on a common work table. It is never left unattended. There is limited access to the room. Employees put the opened mail in a mail cart. One person delivers the mail to the different programs in the building. Another one stays behind to open and sort any remaining mail. Then the mail is

⁷ *Canada (Attorney General) v. Vinet-Proulx*, 2007 FC 99

⁸ GD1, GD7

⁹ This is described in GD8.

delivered to the program units, where it is given a bar code so it can be tracked. It is rare for mail not to be opened, sorted and brought to the program units on the day it is delivered. In such cases, the mail is put into a safe overnight. The next morning, it is put back on the work table with the new incoming mail.

[16] This sounds like a careful procedure. But it is not fool-proof. That is why Service Canada also has a process for locating lost items. If someone claims they sent mail that Service Canada has no record of, a thorough search is done, including a physical search. The Minister did not have any information or estimates about the percentage of mail items lost or delayed each year.¹⁰

[17] I do not think the pandemic had anything to do with the Claimant's application being delayed. Businesses and government agencies did not shut down because of COVID19 until mid-March. But common sense tells me that in any organization that receives large volumes of mail, some is bound to go missing. That includes Service Canada. Unopened or unstamped mail can be lost in the mail room. An application can occasionally go astray, be found three months later, and then be processed as if it was just received.

[18] I think that is most likely what happened here. It is more likely than the Claimant forgetting or neglecting to mail an application he had just spent time completing, and more likely than a delay by Canada Post.

CONCLUSION

[19] I find the Claimant's retirement pension application was received by the Minister on December 16, 2019. His pension payments start the following month, in January 2020.

[20] The appeal is allowed.

Virginia Saunders
Member, General Division - Income Security

¹⁰ GD8-3