



Citation: *BB v Minister of Employment and Social Development*, 2021 SST 482

## **Social Security Tribunal of Canada Appeal Division**

# **Decision**

**Appellant:** B. B. (Claimant)

**Respondent:** Minister of Employment and Social Development (Minister)  
**Representative:** Rebekah Ferriss

---

**Decision under appeal:** General Division decision dated July 21, 2021  
(GP-21-1181)

---

**Tribunal member:** Neil Nawaz

**Type of hearing:** On the Record

**Decision date:** September 15, 2021

**File number:** AD-21-253

## Decision

[1] The appeal is dismissed. The General Division did not make any errors when it found that the Claimant (i) could not cancel her retirement pension in favour of a Canada Pension Plan (CPP) disability pension and (ii) was ineligible for the post-retirement disability benefit.

## Overview

[2] The Claimant is a 63-year-old former cashier. She began receiving a CPP retirement pension in May 2018.

[3] In December 2020, the Claimant applied for a CPP disability pension. The Minister refused the application because the Claimant was already receiving a retirement pension. At the same time, the Minister determined that the Claimant did not qualify for the post-retirement disability benefit (PRDB) because she had not made sufficient contributions to the CPP.

[4] The Claimant appealed the Minister's refusals to the Social Security Tribunal's General Division. On July 21, 2021, the General Division summarily dismissed the Claimant's appeal because it was not satisfied that the appeal had a reasonable chance of success.

[5] The Claimant is now appealing the summary dismissal to the Tribunal's Appeal Division.<sup>1</sup> In her written submissions, she made the following points:

- When she applied for her retirement pension, she did not know that it would limit her right to receive a disability pension;
- She did not become severely disabled until after she began receiving her retirement pension;
- By that time, she had been off work for several years and was therefore unable to pay into the CPP; and

---

<sup>1</sup> See Claimant's notice of appeal dated July 29, 2021 (AD01).

- She did not intentionally delay her application for the disability pension, and she feels that compassion should play a role in decisions about whether to grant benefits.

[6] I have decided that there is no need for an oral hearing in this case. The issues are clear, and so are the relevant facts and the applicable law. This decision is based on my review of the documents already on file—the Claimant’s submissions, as well as the information that was available to the General Division.

## Issues

[7] There are four grounds of appeal to the Appeal Division. A claimant must show that the General Division

- proceeded in a way that was unfair;
- acted beyond its powers or refused to exercise those powers;
- interpreted the law incorrectly; or
- based its decision on an important error of fact.<sup>2</sup>

[8] These are the issues as I see them:

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

Issue 2: Do any of the Claimant’s reasons for appealing have merit?

## Analysis

### **The General Division applied the correct test for summary dismissal**

[9] In my view, the General Division used the appropriate legal test to dispose of the Claimant’s appeal. In paragraph 8 of its decision, the General Division correctly stated that it could summarily dismiss an appeal if it had no reasonable chance of success.<sup>3</sup> I

---

<sup>2</sup> *Department of Employment and Social Development Act (DESDA)*, s 58(1).

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

am satisfied that the General Division understood the legal test and properly applied it to the facts.

[10] The threshold for summary dismissal is high.<sup>4</sup> It is not enough to consider the merits of a case in the parties' absence and then find that the appeal cannot succeed. A decision-maker must determine whether it is **plain and obvious** on the record that the appeal is bound to fail.<sup>5</sup> The question is **not** whether the decision-maker must dismiss the appeal after giving full consideration to the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is **destined to fail**, regardless of whatever evidence or arguments might be submitted at a hearing.

[11] In this case, the Claimant's appeal failed for two reasons:

- First, the Claimant's earliest possible date of disability under the law was September 2019, or 15 months before her CPP disability application date. This came well after November 2018, which marked the six-month deadline to cancel her retirement pension in favour of a disability pension.
- Second, the Claimant did not have enough CPP contributions to qualify for the PRDB. An applicant for the PRDB with more than 25 years of valid earnings requires at least three years of contributions in the six calendar years before the application. The Claimant only had one.

[12] When making these determinations, the General Division correctly applied a high threshold, concluding that the appeal had "no reasonable chance of success." For reasons that I will explain in more detail, it was plain and obvious on the record that the Claimant's arguments were bound to fail.

### **None of the Claimant's reasons for appealing have merit**

[13] I don't see how the General Division made any errors in coming to its decision. The General Division reviewed the file and concluded that the Claimant, who was

---

<sup>4</sup> *Lessard-Gauvin v Canada (Attorney General)*, 2013 FCA 147; *Sellathurai v Canada (Public Safety and Emergency Preparedness)*, 2011 FCA 1; *Breslaw v Canada (Attorney General)*, 2004 FCA 264.

<sup>5</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

already receiving the CPP retirement pension, was barred from receiving either the CPP disability pension or PRDB. I see no reason to interfere with its reasoning.

**– There was no way for the Claimant to cancel her retirement pension in favour of a disability pension**

[14] Under the law, it is irrelevant when a CPP disability claimant might have become disabled if they have already been receiving the retirement pension for 15 months or more. According to section 44(1)(b) of the *Canada Pension Plan*, a disability pension claimant cannot be in receipt of a retirement pension.<sup>6</sup>

[15] There is an exception to this provision. Section 66.1 of the *Canada Pension Plan* allows a beneficiary to cancel a benefit within six months of it starting. If a person does not cancel a retirement pension within six months, the only way it can be cancelled in favour of a disability benefit is if the person is deemed to be disabled **before** the month for which the retirement pension first became payable. But this provision must be read with section 42(2)(b), which states that the earliest a person can be deemed to be disabled is 15 months before the date on which the Minister receives the disability application.

[16] As the General Division correctly noted, this means is that it is effectively impossible to cancel a retirement pension in favour of a disability pension, where the disability application is made 15 months or more after payment of the retirement pension has started.

[17] In this case, the earliest that the Claimant could be deemed to be disabled was September 2019—15 months before her CPP disability application was submitted. By then, the Claimant's retirement pension had been in pay for more than a year, so it was not possible for her to cancel her retirement pension in the hope that she could substitute it for a disability pension.

---

<sup>6</sup> This prohibition is reinforced by section 70(3) of the *Canada Pension Plan*, which says that, once a person starts to receive a retirement pension, that person cannot apply or reapply, at any time, for a disability pension.

**– The Claimant did not have coverage for the PRDB**

[18] The PRDB is a relatively new benefit that is designed to provide disability protection for CPP retirement pensioners who have not reached age 65. In order to receive the PRDB, an applicant must establish a minimum qualifying period (MQP) by showing specific contributions to the CPP in the six calendar years prior to the date of application.<sup>7</sup> Since the Claimant had 25 years of valid earnings in total, she had to show that she made contributions in three of the six calendar years immediately before her December 2020 application date, namely 2014, 2015, 2016, 2017, 2018, and 2019.

[19] The General Division correctly applied the legislative provisions and related case law<sup>8</sup> governing the PRDB, and it found that the Claimant had not established an MQP. I don't see how the General Division made an error on this point: the Claimant's record of earnings plainly show that her last year of valid earnings was 2014, giving her only one of the six years before her application.<sup>9</sup>

**– Both the General and Appeal Divisions must follow the law**

[20] The Claimant argues that she did not know about the CPP's eligibility rules and should not be penalized for the "delay" in filing her disability application.

[21] Unfortunately, this argument cannot succeed.

[22] I'm sure that, when she took her early CPP retirement pension, the Claimant did not realize that she was impairing her chances of later qualifying a disability pension. I'm also sure that, if the Claimant knew then what she knows now, she would have applied for a disability pension much sooner. That said, I don't see any recourse available to her under the law. The General Division was not permitted to consider any extenuating circumstances around the Claimant's applications, and neither am I. We

---

<sup>7</sup> *Canada Pension Plan*, ss 44(1)(h), 44(4), and 70.01

<sup>8</sup> The General Division appropriately followed a case called *N.L. v Minister of Employment and Social Development*, 2020 SST 741, in which the Appeal Division explained how to determine an MQP for PRDB purposes.

<sup>9</sup> See Claimant's record of earnings, GD02-49.

can't simply ignore the explicit terms of the *Canada Pension Plan* and give the Claimant what she wants, no matter how much we might sympathize with her.<sup>10</sup>

## Conclusion

[23] The Claimant has not shown how the General Division erred when it found her ineligible for the CPP disability pension and the PRDB.

[24] The appeal is dismissed.



---

Member, Appeal Division

---

<sup>10</sup> *Minister of Human Resources Development v Tucker*, 2003 FCA 278.