



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *BB v Minister of Employment and Social Development*, 2021 SST 483

Tribunal File Number: GP-21-1181

BETWEEN:

B. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: George Tsakalis

DATE OF DECISION: July 21, 2021

DECISION

[1] The appeal is summarily dismissed.

[2] The Claimant cannot cancel her Canada Pension Plan (CPP) retirement pension for a CPP disability pension.

[3] The Claimant is not eligible to receive a Post-Retirement Disability Benefit (PRDB).

OVERVIEW

[4] The Claimant was born in 1958. She began receiving a retirement pension in May 2018. She applied for a disability pension in December 2020.

[5] The Minister of Employment and Social Development (the Minister) denied her application because it received her disability application more than 15 months after she began receiving her retirement pension. The Minister also considered whether the Claimant could receive a PRDB. The Minister concluded that she could not do so because she did not make sufficient CPP contributions to receive a PRDB.¹

[6] The Claimant asked the Minister to reconsider its decision. The Minister declined to do so.²

[7] The Claimant appealed the Minister's reconsideration decision to the General Division of the Social Security Tribunal of Canada.

ANALYSIS

[8] I must summarily dismiss an appeal if it has no reasonable chance of success.³ An appeal has no reasonable chance of success where it is plain and obvious on the record that the appeal is bound to fail.⁴

¹ See GD2-25

² See GD2-32-33

³ See subsection 53(1) *Department of Employment and Social Development Act*

⁴ See *The Estate of J.B. v. Minister of Employment and Social Development*, 2018 SST 564

[9] I have concluded that this appeal has no reasonable chance of success because the Claimant cannot cancel her retirement pension for a disability pension and she did not make enough CPP contributions to receive a PRDB. I find it is plain and obvious on the record that this appeal is bound to fail.

The Claimant cannot cancel her retirement pension in favour of a disability pension

[10] Claimants cannot collect a CPP retirement pension and disability pension at the same time.⁵ Claimants can request the cancellation of a benefit if they request the cancellation in writing within six months after the payment of the benefit began.⁶ The Claimant did not make such a request.

[11] Claimants can still request the cancellation of a retirement pension in favour of a disability pension if the claimant is “deemed” disabled the month before the retirement pension began.⁷ The earliest a claimant can be “deemed” disabled is 15 months before they made the disability application.⁸ This means that the CPP does not allow for the cancellation of a retirement pension in favour of a disability pension where the disability application is made 15 months or more after the retirement pension became payable.

[12] The Claimant started receiving her retirement pension in May 2018.⁹ The Minister did not receive her disability application under December 2020.¹⁰ Since the Claimant applied for the disability pension in December 2020, her earliest deemed disability date is September 2019, which is after the date the Claimant began receiving her retirement pension. This means that the Claimant cannot cancel her retirement pension for the disability pension because her deemed disability is after the month that her retirement pension became payable.

[13] I gave the Claimant notice in writing of my intent to summarily dismiss her appeal as required by section 22 of the *Social Security Tribunal Regulations*.

⁵ See paragraph 44(1)(b) *Canada Pension Plan*

⁶ See section 46.2 *Canada Pension Plan Regulations*

⁷ See subsection 66.1(1.1) *Canada Pension Plan*

⁸ See paragraph 42(2)(b) *Canada Pension Plan*

⁹ See GD2-40

¹⁰ See GD2-24

[14] The Claimant responded to my notice. She said she stopped working in 2014 after her daughter passed away. She was injured in a motor vehicle accident about one month after her daughter's death. She was diagnosed with diabetes and high blood pressure, and in 2018 was diagnosed with polymyalgia rheumatica. She said that she never thought she would become disabled and she was not aware of any limitation on her ability to apply for a disability pension. She now finds herself in difficulty financial circumstances.

[15] I feel sorry for the Claimant. However, the Tribunal was created by law. I can only make decisions that I have the power to make under the Tribunal's enabling legislation.¹¹ I must follow the letter of the law. I cannot make decisions on compassionate grounds.¹² I cannot rule that the Claimant can cancel her retirement pension for a disability pension because I am sympathetic towards her. The law does not allow me to do so.

The Claimant cannot receive a PRDB

[16] The PRDB was created in January 2019. It provides disability protection for CPP retirement pensioners who are disabled on or after their retirement pension start date and have not reached age 65. In order to receive a PRDB, a Claimant must be under 65 **and** make sufficient contributions to the CPP in order to meet the minimum qualifying period (MQP).¹³

[17] The Tribunal's Appeal Division has decided how to calculate a MQP to determine whether claimants qualify for the PRDB.¹⁴ The Appeal Division decided that the Tribunal must look at a claimant's last six calendar years prior to the application when calculating the MQP. In this case, this would encompass the years 2014 to 2019 because of the Claimant's 2020 application.

[18] The Claimant had more than 25 years of valid CPP contributions. In order to qualify for the PRDB, she would have needed valid CPP contributions for at least three out of six years from 2014 to 2019.¹⁵ However, the Claimant's Record of Earnings did not show that she made valid

¹¹ See *R. v. Conway*, 2010 SCC 22

¹² See *Canada (MSD) v. Kendall* (June 7, 2004), CP 21960 (PAB) and *S.S. v. Minister of Employment and Social Development*, 2018 SST 705

¹³ See sections 44(1)(h), 44(4) and 70.01 *Canada Pension Plan*

¹⁴ See *N.L. v. Minister of Employment and Social Development*, 2020 SST 741

¹⁵ See subsection 44(4) *Canada Pension Plan*

CPP contributions for at least three out of six years from 2014 to 2019.¹⁶ This means that the Claimant did not meet the MQP requirements to qualify for the PRDB.

[19] I do not have jurisdiction to award the Claimant a PRDB on compassionate grounds. The law does not allow me to award the Claimant a PRDB because she did not make sufficient CPP contributions to qualify for this benefit.

CONCLUSION

[20] The appeal is summarily dismissed.

[21] The Claimant cannot cancel her retirement pension for a disability pension. This is because she applied for the disability pension more than 15 months after she began receiving a retirement pension.

[22] The Claimant cannot receive a PRDB because she did not meet the MQP requirements to qualify for this benefit.

George Tsakalis
Member, General Division - Income Security

¹⁶ See GD2-34-39