



Citation: *ZR v Minister of Employment and Social Development*, 2022 SST 363

Social Security Tribunal of Canada Appeal Division

Decision

Appellant (Claimant): Z. R.
Representative: M. G.

Respondent: Minister of Employment and Social Development
Representative: Jared Porter

Decision under appeal: General Division decision dated February 18, 2022
(GP-21-1015)

Tribunal member: Kate Sellar

Type of hearing:

Decision date: May 9, 2022

File number: AD-22-130

Decision

[1] I am allowing the appeal. The General Division made errors of both fact and law. I will give the decision that the General Division should have given: The Claimant is entitled to a disability pension under the *Canada Pension Plan*. These reasons explain why.

Overview

[2] Z. R. (Claimant) came to Canada from Cuba in 1998. She worked as a cleaner. She stopped working in November 2018. She has lupus. She gets migraines and has fatigue. She has swelling in her joints and pain in her wrists, hips, knees, ankles, and feet.

[3] The Claimant applied for a disability pension on November 28, 2019. The Minister of Employment and Social Development Canada (Minister) refused her application initially and on reconsideration.

[4] The Claimant appealed to this Tribunal. The General Division decided that the Claimant did not show that she had a severe disability on or before December 31, 2015, so she is not eligible for the disability pension.

[5] I gave the Claimant permission (leave) to appeal the General Division decision. I found that it was arguable that the General Division made an error of fact by misunderstanding the evidence from the Claimant's doctors about when her symptoms and functional limitations started.

[6] I must decide whether the General Division made an error, and if it did, what I will do to fix (remedy) that error.

[7] I find that the General Division made errors of both fact and law. I will give the decision that the General Division should have given: the Claimant is entitled to a disability pension.

The parties agree on the outcome of the appeal

[8] Following a settlement conference on May 4, 2022, the Claimant and the Minister reached an agreement to settle the matter at the Appeal Division. After the conference, they provided the Tribunal with a written and signed agreement. They agreed that:

The General Division erred in fact by stating that the report from Dr. Dzieciol indicated a July 2019 date of onset for lupus symptoms, when in actuality the report indicated that the date of symptom onset was 2014. The General Division also erred in fact by stating that the 2019 report the report from Dr. Silverberg suggested that the [Claimant's] limitations only affected her as of the date of the report, when in actuality Dr. Silverberg's report stated that [*sic*] [Claimant] has had increasing joint pain for the last five years.

The General Division erred in law by not applying the proper test for severity as it did not analyze how the [Claimant's] personal characteristics could impact her capacity to pursue substantially gainful income in a "real world" context in accordance with *Villani v Canada* (AG). The General Division also erred in law by failing to consider post-minimum qualifying period (MQP) medical evidence that is relevant to the [Claimant's] condition prior to her MQP.¹

[9] The parties asked the Appeal Division to allow the appeal and give the decision that the General Division should have given, as follows:

a) The [Claimant's] income and contributions create an MQP of December 31, 2015;

b) The [Claimant] became disabled in December 2015, within the definition of the *CPP's* paragraph 42(2)(a). However, under *CPP* paragraph 42(2)(b), the [Claimant's] earliest possible deemed date of onset of disability is August 2018, fifteen (15) months before her November 28, 2019 application for disability benefits;

c) Under *CPP* paragraph 44(1)(b)(ii) and section 69, the [Claimant] is entitled to a disability pension commencing December 2018, which is four months after the deemed month of onset in August 2018;

¹ See AD5 for the Settlement Agreement the parties filed with the Tribunal.

d) Any agreement between the parties is subject to the law, and in particular, the *CPP*, the *SST Regs*, and the *DESDA*; and

e) Proceeding in this manner is the most cost-effective and efficient for both parties and consistent with section 2 and paragraph 3(1)(a) of the *SST Regs*.

I accept the proposed outcome

[10] I accept the parties' agreement entirely.

[11] I am satisfied that the General Division made all of the errors the parties listed in their agreement. The record squarely contradicts the General Division's conclusion about when the Claimants symptoms and functional limitations started. The General Division's findings about when the Claimant's symptoms began were perverse or capricious.

[12] Further, the General Division did not consider the Claimant's personal circumstances, which is an error of law. The Claimant had a serious medical condition before the end of the MQP. The law requires the General Division to consider whether the Claimant's personal circumstances (like age, education, ability to communicate in English, and work and life history) were additional barriers to her ability to work in the real world.

[13] The Claimant has a severe and prolonged disability within the meaning of the *Canada Pension Plan*.² The Claimant has functional limitations that meant that she was incapable regularly of pursuing any substantially gainful work on or before the end of her MQP. Alternate work or retraining is not realistic given her personal circumstances.

[14] To fix the error, I will give the decision that the General Division should have given. In accordance with the parties' agreement and the *Canada Pension Plan*, payments begin effective December 2018.

² See the *Canada Pension Plan* section 42(2) for the definition of a severe and prolonged disability in this context.

Conclusion

[15] I allow the appeal in accordance with the parties agreement. The General Division made errors. To remedy those errors, I have given the decision that the General Division should have given. The Claimant is entitled to a disability pension and her payments start effective December 2018.

Kate Sellar
Member, Appeal Division