



Citation: *MD v Minister of Employment and Social Development*, 2022 SST 1516

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: M. D.
Representative: Raswinder Johal

Respondent: Minister of Employment and Social Development
Representative: Rebekah Ferriss

Decision under appeal: General Division decision dated April 13, 2022
(GP-20-1955)

Tribunal member: Kate Sellar

Type of hearing: On the Record
Decision date: December 8, 2022
File number: AD-22-418

Decision

[1] The appeal is allowed. The General Division made an error of fact. I will give the decision that the General Division should have given: the Claimant is entitled to a Canada Pension Plan (CPP) disability pension.

Overview

[2] M. D. (Claimant) worked in a factory. His last job ended in August 2018.¹ He said that he had to stop working because of his arthritis, gout, deep vein thrombosis (DVT) and other medical conditions.

[3] The Claimant applied for a CPP disability pension in April 2020. The Minister of Employment and Social Development (Minister) refused his application both initially and on reconsideration.

[4] The Claimant appealed to this Tribunal. The General Division dismissed his appeal, finding that he was not entitled to the disability pension. The General Division decided that the Claimant had his medical conditions for a long time, he had managed to work despite those conditions in the past, and his conditions are well managed with treatment.

[5] I granted the Claimant permission (leave) to appeal. Now I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (Act). If the General Division made an error, I must decide how to fix (remedy) that error.

The parties agree on the outcome of the appeal

[6] The Claimant and the Minister reached a settlement of the appeal at a settlement conference on December 8, 2022. The parties agreed that:

- The General Division made an important error of fact under section 58(1)(c) of the Act by finding that the Claimant's difficulty standing would not impact

¹ See GD2-40.

his ability to work because he had no new symptoms as of 2019. The Claimant had new symptoms documented at GD5-10 of the record.

- The Appeal Division should allow the Claimant's appeal because the General Division made an error of fact. To fix the error, the Appeal Division should give the decision that the General Division should have given.
- The Appeal Division should decide that the Claimant had a severe and prolonged disability within the meaning of the *Canada Pension Plan* (before the end of his coverage period) when he stopped working in August 2019. Since the Claimant applied for the disability pension in April 2020, the earliest he can be deemed disabled is 15 months before his application, which is January 2019.² Payments start four months later in May 2019.³

I accept the parties' agreement

[7] In my view, the General Division made the error of fact the parties outlined in their agreement. There was documentation in the file about the Claimant's symptoms at GD2-10 that the General Division ignored or misunderstood. The Claimant had functional limitations stemming from his legs that meant he was incapable regularly of pursuing any substantially gainful employment.

[8] To fix the error, I agree to give the decision that the General Division should have given.⁴ I am satisfied that the Claimant's disability was severe and prolonged when he stopped working.⁵ The Claimant had multiple conditions that affected his ability to work. In addition to his functional limitations, some of his personal circumstances presented additional challenges in terms of employability. The Claimant did not refuse treatment and took steps to manage his condition. Since the Claimant applied for the disability pension in April 2020, his disability pension payments start as of May 2019.

² See section 42(2)(b) of the *Canada Pension Plan*.

³ See section 69 of the *Canada Pension Plan*.

⁴ See section 59(1) of the Act.

⁵ I should clarify that it seems to me that the Claimant's last job ended in August 2018.

Conclusion

[9] I allowed the appeal. The General Division made an error of fact. I gave the decision that the General Division should have given: The Claimant is entitled to a disability pension. Payments start effective May 2019.

Kate Sellar
Member, Appeal Division