



Citation: *YO v Minister of Employment and Social Development*, 2022 SST 1168

**Social Security Tribunal of Canada
General Division – Income Security Section**

Decision

Appellant: Y. O.
Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated November 12, 2020 (issued
by Service Canada)

Tribunal member: Anne S. Clark
Type of hearing: Teleconference
Hearing dates: April 12, 2022
July 28, 2022
September 14, 2022
Hearing participant: Appellant
Decision date: October 7, 2022
File number: GP-21-331

Decision

[1] The appeal is dismissed.

[2] The Appellant, Y. O., isn't eligible for a higher *Canada Pension Plan* (CPP) pension or additional retroactive payments. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant's Record of Earnings (Record) shows he had three years of contributions to the CPP.¹ On January 31, 2020, the Appellant applied for a CPP retirement pension. His application was approved and his pension was paid as of February 2019.

[4] The Appellant says he worked for more than three years in Canada. He thinks his Record must be wrong. He also said he waited until 2020 to apply for his pension. That was when he received his Canadian Social Insurance Number (SIN). He feels his pension should have been effective in January 2016.

[5] The Minister says the Appellant's pension was based on his contributions to the CPP reported in the Record. The Minister also says the Appellant received the maximum amount of retroactive benefits allowed by the law.

What the Appellant must prove

[6] For the Appellant to succeed, he must prove he is entitled to a higher pension or additional retroactive benefits.

¹ The Appellant's Record is at page GD2-21.

Matters I have to consider first

I refused the Appellant's third request to delay the appeal

– I adjourned the first teleconference

[7] The Tribunal scheduled a hearing by teleconference for April 12, 2022. During the hearing, the Appellant said he questioned the accuracy of the information the Minister used to calculate his pension. In particular he believes he worked more than three years in Canada. He feels the Record does not include all of the years he worked in Canada.

[8] I explained to the Appellant that I am required to accept the information on the Record as correct.² No matter what evidence he presents, I do not have the authority to amend his Record. I also explained that I am required to hold the hearing as quickly and efficiently as fairness permits.³

[9] The Appellant said he didn't have the complete file from the Tribunal so he could not be sure we had all of his information. He also said he thought he could get evidence to prove the Record was wrong. He questioned whether the Record includes his earnings from work he did at the University of Calgary in 1977.⁴ The Appellant asked for time to contact the Canada Revenue Agency (CRA) so he could ask them to check his information. He also thought he could persuade them to "correct" the information in his Record.

[10] I agreed to allow the Appellant the time he requested. I gave him until June 30, 2022, to file any new evidence. I rescheduled his hearing for July 28, 2022. He agreed to the date and time. I also confirmed his address and sent him another copy of his Tribunal file to be sure he had all of the information that was filed. The Appellant didn't file any new information. He joined the teleconference on July 28, 2022.

² See section 97 of the *Canada Pension Plan*.

³ See section 3 of the *Social Security Tribunal Regulations*.

⁴ See GD4-2.

– **I adjourned the second teleconference**

[11] On July 28, 2022, I held the second teleconference. The Appellant said he wasn't able to call the CRA. He said he had medical problems from arthritis in his back. He didn't explain how that prevented him from calling the CRA or pursuing the information he thinks he needs for his appeal. He stressed that he believes he worked continuously in Canada for more years than his Record shows. He feels he should be able to prove that and have the CRA correct the document. He asked for more time to contact the CRA.

[12] I reminded the Appellant that the Record is presumed correct. I could not tell him if there is anything the CRA, or anyone, can do to assist him with entries made in 1977. However, he said was unable to follow up because of back pain and arthritis. I thought that could be considered an exceptional circumstance.⁵ I agreed to a second delay.

[13] I adjourned the hearing until September 14, 2022, as the Appellant requested. He agreed to the date and time. I urged the Appellant to keep a record of his efforts to obtain evidence for his appeal. I reminded him that I would only be able to delay the appeal beyond September if exceptional circumstances justified the delay. He agreed there would be no delays beyond that date.

[14] The Appellant didn't file additional evidence or contact the Tribunal. On September 13, 2022, a Tribunal officer called the Appellant to remind him of the hearing. The Appellant said he could not proceed because he didn't have a letter he needed. The officer told him he would have to ask the Tribunal member for an adjournment. The officer advised the Appellant to call in at the scheduled time and explain why he felt he could not go ahead with the hearing.

– **I refused to adjourn the third teleconference**

[15] On September 14, 2022, the day of the hearing, the Appellant called the Tribunal officer. He said he could not attend the hearing because he didn't feel well. The officer

⁵ Section 11(2) of the *Social Security Tribunal Regulations* says that I can only grant the same party (in this case, the Appellant) more than one adjournment if it is justified by exceptional circumstances.

reminded him that the officer could not grant the Appellant's request to delay the appeal. The officer recommended the Appellant call in to the hearing and make his request at the beginning of the hearing.

[16] The Appellant joined the third teleconference at the scheduled time. He told me he could not continue because he was ill. I reminded him that I could only grant his request to delay his appeal again if the delay was justified by exceptional circumstances. I asked him to tell me what circumstances made him unable to proceed. He said he was uncomfortable but didn't explain why he could not continue with the hearing.

[17] The Appellant said he wasn't able to talk to anyone at the CRA. He said he called once but no one returned his call. He hasn't been able to get any new information. He confirmed his previous testimony that he worked "off the books" for a man in Calgary. He has no record of those earnings. He said a former employer told him he contacted the "officials" about his work. The Appellant thought the CRA would have that information. The Appellant wanted more time to approach the CRA. The Appellant also asked me how his pension would change if his appeal were successful. I told him I could not speculate on how or when his pension could change. I also told him his appeal can't be successful with the information on file.

[18] I refused the Appellant's request to delay his appeal again. I reminded him that he gave his affirmed testimony in April. He repeated his testimony in July and confirmed some facts again in September. I also reminded him that he didn't make efforts during the previous two delays to obtain the evidence he thinks he can get.

[19] I told the Appellant there were no exceptional circumstances that would justify delaying the appeal again. His explanation of why he could not proceed with his hearing was vague. He said he was "uncomfortable" but didn't explain how that prevented him from participating in the appeal. Another delay wasn't justified.

[20] I told the Appellant the hearing should proceed. I had his earlier testimony and the evidence on file. He participated in the previous calls and was aware of the rules

that applied to his appeal. He had opportunities to add to the evidence. He didn't provide any new or different information.

[21] The Appellant was clearly disappointed and appeared angry. I asked him to allow me to talk about the next steps. He continued to speak loudly and interrupt me as I explained my decision to continue the appeal without delay. I talked about the fact that he had two previous delays and didn't take advantage of the time he said he needed. He made no real efforts to seek evidence to present. He didn't respond to the agreed deadlines. He didn't give a reasonable description of what he thought he needed or how he intended to get it.

[22] I told the Appellant I would continue with the appeal and he could give more testimony or make submissions. He refused to stay on the call for the rest of the hearing.

The Appellant didn't participate in the rest of the hearing

[23] A hearing can go ahead without the Appellant if he got the notice of hearing.⁶ The Appellant had notice of the hearing and participated in all three teleconferences. He was aware of the issues on appeal and the rules that applied to his CPP pension. He gave affirmed testimony, submissions, or both, at all three teleconferences. I decided that the Appellant had notice of the hearing and the opportunity to participate. So, I continued with the appeal as scheduled, but without additional information or evidence from the Appellant.

Reasons for my decision

The Appellant's monthly pension

[24] The Appellant's monthly CPP retirement pension was calculated using his pensionable earnings. The Record shows he made valid contributions to the CPP in 1977, 1978, and 1980.⁷ There are no reported contributions in any other year in his contributory period. At the Appellant's request, the Minister contacted the CRA to

⁶ Section 12 of the *Social Security Tribunal Regulations* sets out this rule.

⁷ See the Record at GD2-21.

search for contributions in 1976. The CRA said they have no record for the Appellant in 1976.

[25] The Record is presumed correct.⁸ If the CRA doesn't adjust the information in the Record, the Appellant's benefits have to be calculated using the information in the Record. The Appellant didn't prove there was an error in the way the Minister calculated his monthly pension.

The earliest the Appellant's pension could be paid was November 2019

[26] The *Canada Pension Plan* tells us when a retirement pension starts. Payments start with the **latest** of the following dates:⁹

- a) the month the applicant turned 60
- b) the month after the Minister received the application
- c) if a person applies after they turn 65, up to 11 months before they applied (but no earlier than the month they turned 65)
- d) the month the applicant chose in the application

[27] The Appellant turned 60 in 2006 and 65 in 2011. He applied for retirement benefits in January 2020 and asked that his pension be paid as of January 2016. The **latest** of the dates that apply was February 2019, 11 months before the month he applied. Therefore, he received the maximum allowed under the CPP.

[28] The filing date of a pension may be deemed earlier if an appellant meets the test for incapacity under the CPP.¹⁰ To satisfy the CPP's incapacity test, the Appellant must prove it is more likely than not that he lacked the capacity to form or express the intention to apply for a benefit. The capacity to form or express an intention to apply for

⁸ See section 97 of the *Canada Pension Plan*.

⁹ Section 67(3.1) of the *Canada Pension Plan* sets out these rules.

¹⁰ See section 60(8) of the *Canada Pension Plan*.

benefits is similar to the capacity to form or express an intention with respect to other choices in life.¹¹

[29] I asked the Appellant why he waited until 2020 to apply for a pension. He said he chose to wait and 2020 was when he received his Social Insurance Number. He didn't raise any issues with his capacity to apply.

Conclusion

[30] I find that the Appellant isn't eligible to a higher monthly pension or to have his retirement pension paid earlier than February 2019.

[31] This means the appeal is dismissed.

Anne S. Clark
Member, General Division – Income Security Section

¹¹ See *Sedrak v. Canada (Minister of Social Development)*, 2008 FCA 86.