



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *HZ v Minister of Employment and Social Development*, 2016 SSTGDIS 587
Tribunal File Number: GP-15-484

BETWEEN:

H. Z.

Appellant

and

**Minister of Employment and Social Development
(formerly Minister of Human Resources and Skills Development)**

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: P. Vanderhout

DATE OF DECISION: September 1, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant's application for a Canada Pension Plan ("CPP") retirement pension was received on June 11, 2013. He was 46 years old at that time and requested a pension as soon as he qualified. On other occasions, he requested a pension immediately, at age 50 or at age 55. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Tribunal; the appeal was deemed to be complete on August 26, 2015. In a decision dated June 6, 2016, the Tribunal allowed the Appellant an extension of time to appeal, pursuant to subsection 52(2) of the *Department of Employment and Social Development Act* ("DESD Act"). However, the Tribunal also issued a Notice of Intention to Summarily Dismiss the Appellant's appeal.

ISSUE

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[3] Subsection 53(1) of the DESD Act states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* ("SST Regulations") states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

EVIDENCE

[5] The Appellant is a Turkish citizen and was born in Turkey on January 25, 1967. His date of birth is not in dispute. He came to Canada in the 1990s and worked for a number of years. He made contributions to the CPP during this time. However, a conditional departure order for the Appellant was issued on July 24, 2001. This became a deemed departure order and the Appellant was required to leave Canada. It appears that, after leaving Canada, the Appellant returned to Turkey. He currently maintains an address in Turkey.

[6] On April 15, 2013, the Respondent sent the Appellant a letter indicating that “you may qualify for a retirement pension but you have not yet applied”. The Appellant was provided with an application form and invited to apply for benefits. It is not clear why this was sent to the Appellant, as he was only 46 years old at the time. Nonetheless, his application for a CPP retirement pension was received by the Respondent on June 11, 2013. In his application, the Appellant indicated that he wanted to start receiving his pension as soon as he qualified.

[7] The Respondent initially denied the Appellant’s application on October 11, 2013, indicating that a CPP retirement pension was not payable prior to the month following a person’s 60th birthday. He was invited to re-apply six months prior to his 60th birthday. The Appellant requested a reconsideration of that decision, indicating that he should not have to wait until he was 60 years old. In the alternative, he requested a repayment of all taxes and other payments made to the government of Canada while he was working. He also requested Canadian citizenship or landed immigrant status. He repeated these requests on several subsequent occasions.

[8] The Respondent’s reconsideration decision was issued on December 30, 2013. The original decision was upheld, once again on the basis that the CPP retirement pension was only payable to eligible persons who had reached the age of 60.

[9] On January 26, 2015, the Tribunal received correspondence from the Appellant that suggested he should receive his CPP retirement pension immediately or by age 55. He reiterated these requests in correspondence received by the Tribunal on August 6, 2015 and on August 14, 2015.

[10] In correspondence received by the Tribunal on April 25, 2016, the Appellant indicated that he wanted his CPP retirement pension immediately or at the age of 50, as he could not wait until his 60th birthday. He reiterated these requests in correspondence received by the Tribunal on May 4, 2016.

[11] A Notice of Intention to Summarily Dismiss was sent to the Appellant on June 6, 2016. The Appellant was given until August 31, 2016 to respond to the notice. The Appellant’s submissions were received by the Tribunal on August 11, 2016.

SUBMISSIONS

[12] The Appellant has made many submissions regarding his situation. Many of these submissions deal with his desire to return to Canada. However, the Tribunal does not have jurisdiction with respect to immigration matters, nor does it have jurisdiction with respect to taxes paid by the Appellant. With respect to his entitlement to a CPP retirement pension prior to reaching age 60, the Appellant's most relevant submissions are that:

- a) He received a notice from the Respondent indicating that he was eligible to receive a CPP retirement pension;
- b) During his time in Canada, he worked legally for a number of years, never collected unemployment or any other benefits, and faithfully paid his taxes;
- c) He believes he is entitled to receive his CPP retirement pension before his 60th birthday; and
- d) He is unable to wait until his 60th birthday for various reasons, including the political situation in Turkey, his family difficulties, and his decreased ability to provide for himself and others that depend on him.

[13] The Respondent was not asked to make submissions with respect to the Notice of Intention to Summarily Dismiss the Appellant's appeal.

ANALYSIS

[14] In compliance with section 22 of the SST Regulations, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions.

[15] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP.

[16] S. 44(1)(a) of the *Canada Pension Plan* states that a retirement pension shall be paid to a contributor who has reached 60 years of age. Other sections of the *Canada Pension Plan* establish that a person opting to commence their CPP retirement pension between ages 60 and 65 will have their pension reduced. The “regular” CPP retirement pension amount (which is based on a person’s CPP contributions) is payable to those who elect to begin receiving their CPP retirement pension upon reaching age 65. However, there are no provisions in the *Canada Pension Plan* that allow payment of a retirement pension prior to a contributor’s 60th birthday.

[17] It is not disputed that the Appellant was only 46 years old when he applied for a CPP retirement pension in 2013, nor is it disputed that he is only 49 years old now. As the Appellant is not 60 years old and the *Canada Pension Plan* does not permit payment of the CPP retirement pension prior to an applicant’s 60th birthday, the Respondent correctly declined to commence immediate payment of the Appellant’s CPP retirement pension (or upon either his 50th or 55th birthdays). There is no legislative provision that would permit payment of the CPP retirement pension prior to an applicant’s 60th birthday, even in the case of personal need. As noted above, the Tribunal is bound by the legislation currently in place and cannot create an exception that is not specifically permitted by that legislation. The Tribunal finds that there is no legal basis on which the Appellant’s appeal could succeed.

[18] With respect to the Appellant’s various submissions that are not addressed by the above analysis, the Tribunal notes that it does not have the jurisdiction to intervene in immigration or taxation matters. The Tribunal also cannot apply the laws of another country to a Canadian matter. While it is possible that retirement pensions administered by other countries may be payable prior to age 60, such laws are not applicable to the Appellant’s appeal.

[19] The Tribunal acknowledges that the Appellant may have paid his taxes and made other remittances required by law while working in Canada. However, such compliance does not permit the CPP legislation to be varied for the Appellant’s benefit.

[20] It is not at all clear why the Appellant received a notice from the Respondent indicating that he may qualify to receive a CPP retirement pension. He was only 46 years old at the time. In fact, the Respondent stated elsewhere that applications for a CPP retirement pension ought to be made 6 months (rather than 14 years) prior to an applicant’s 60th birthday. In all likelihood, the Respondent’s notice of April 15, 2013 was sent in error. While it is very unfortunate that the

Respondent's letter of April 15, 2013 appears to have created a misapprehension on the Appellant's part, the Tribunal cannot find that this letter could override CPP legislation and create any kind of obligation for the Respondent. As noted above, there is nothing in the CPP legislation permitting payment of the CPP retirement pension before age 60. Ultimately, the Tribunal finds that the Respondent's April 15, 2013 letter has no effect in this matter.

[21] As there is no basis on which the Appellant could be entitled to receive a CPP disability pension prior to reaching age 60, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[22] The appeal is summarily dismissed.

P. Vanderhout
Member, General Division - Income Security