

Citation: *Minister of Human Resources and Skills Development v. S. D.*, 2014 SSTAD 155

Appeal #: AD-14-225

BETWEEN:

Minister of Human Resources and Skills Development

Appellant

and

S. D.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
[Appeal Division]

SOCIAL SECURITY TRIBUNAL MEMBER: Janet LEW

HEARING DATE: June 20, 2014

TYPE OF HEARING: On the Record

DECISION

[1] The Member of the Appeal Division finds that the General Division erred in law by exceeding the maximum retroactivity of payments of disability pension permitted under the *Canada Pension Plan*.

BACKGROUND

[2] This is an appeal from a decision of the General Division dated January 20, 2014. The General Division found that the Respondent had a severe and prolonged disability in July 2010 and calculated that disability benefits started as of November 2010. The Appellant does not contest the granting of disability benefits to the Respondent, but submits that the General Division erred in law by exceeding the maximum retroactivity of payments of disability pension permitted under the *Canada Pension Plan*.

[3] The Appellant filed an Application for Leave to Appeal and Notice of Appeal on May 6, 2014, within the time permitted under the *Department of Employment and Social Development (DESD) Act*. Leave to Appeal was granted on June 9, 2014.

GROUND OF APPEAL

[4] The only grounds of appeal are those set out in subsection 58(1) of the DESD Act:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[5] The Appellant submits that the General Division erred in law in failing to apply paragraph 42(2)(b) of the *Canada Pension Plan* and subsection 43(1) of the *Canada Pension Plan Regulations*, in determining when payment of disability benefits should commence.

[6] The Minister of Human Resources and Skills Development received the Respondent's Application for Disability Benefits in December 2011. The Appellant submits that under the *Canada Pension Plan*, the earliest date that the Respondent could therefore be deemed disabled is September 2010, fifteen months prior to the date the application for disability benefits was received by the Appellant. The Appellant further submits that the earliest date that payment of disability benefits could therefore commence is four months later, which in this case would be January 2011.

[7] The Respondent contacted the Social Security Tribunal (the "Tribunal") on May 21, 2014, after receiving a copy of the Application. The Tribunal responded to his enquiries regarding the Application and reportedly advised that he did not oppose the Application for leave, or the Appellant's position that the commencement of payment of disability benefits is subject to a maximum retroactivity.

[8] The Respondent submitted a letter dated June 3, 2014, which was received by the Tribunal on June 9, 2014. The Respondent advised that he was in complete agreement with Service Canada as to the error of start date. He wrote,

"The start date error of November 2010 does not comply with the mandated law of 15 months and the start date should have been January 2011 as within the confines of the law.

I feel it would be unnecessary to hold a hearing on the matter as I do not dispute Services Canada's appeal on start date of January 2011."

ISSUE

[9] Did the General Division err in law in granting disability benefits with payments retroactive to November 2010?

ANALYSIS

[10] The question as to whether the General Division applied the proper legal criteria in determining the commencement date of the payment of disability benefits is a question of law, reviewable on the standard of correctness: *Dunsmuir v New Brunswick*, 2008 SCC 9.

[11] Paragraph 42(2)(b) of the *Canada Pension Plan* provides that an individual cannot be deemed to have become disabled earlier than fifteen months prior to the time of the making of any application. Accordingly, given that the Respondent's application was received in December 2011, the earliest date that he could have become disabled is September 2010, and, pursuant to section 69 of the *Canada Pension Plan*, the earliest date that payment of disability benefits could therefore commence is four months later, which in this case would be January 2011.

CONCLUSION

[12] The appeal is granted. Payment of disability benefits shall commence as of January 2011.

Janet Lew

Member, Appeal Division