

Citation: *Minister of Human Resources and Skills Development*, 2014 SSTAD 293

Appeal No: CP 28277

BETWEEN:

Minister of Human Resources and Skills Development

Appellant

and

J. M.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: Pierre LAFONTAINE

TYPE OF HEARING: In person hearing held in Regina, Saskatchewan,
on October 8, 2014 at 9h00 am (Central Time
Zone)

DATE OF DECISION: October 14, 2014

DECISION

[1] The request made by the Appellant to order the Respondent to sign and return to the Appellant the Consent for Service Canada to obtain Personal Information, Consent to attend an Independent Medical Examination (IME), and the Request Sheet for Additional Information forms is allowed.

INTRODUCTION

[2] The Respondent applied for a disability pension under the *Canada Pension Plan (CPP)* on October 18, 2004.

[3] On July 13, 2011, a Review Tribunal determined that a *CPP* disability pension was payable to the Respondent.

[4] The Appellant filed an Application for Leave to Appeal of the decision of the Review Tribunal with the Pension Appeal Board (PAB) on October 11, 2011.

[5] The PAB granted leave to appeal on November 4, 2011. Pursuant to section 259 of the *Jobs, Growth and Long-term Prosperity Act of 2012*, the Appeal Division of the Tribunal is deemed to have granted leave to appeal on April 1, 2013.

[6] The Appellant requested that the Respondent sign and deliver to it a Consent for Service Canada to obtain personal information, a Consent to attend an Independent Medical Examination (IME) and a Request Sheet for Additional Information forms (hereinafter “Consents”) pursuant to s. 68 of the *Canada Pension Plan Regulations (the “CPP Regulations”)*.

[7] The Respondent did not sign and provide the Consents to the Appellant.

[8] The Appellant then brought a motion before the PAB seeking an order that the Respondent provide these Consents, and that his disability application be dismissed if he failed to do so within a prescribed time period.

[9] On October 16, 2012, the PAB ordered that the Respondent provide the Consents within 21 days, and upon failure to do so, the Appellant would be at liberty to apply ex-parte for an order granting the appeal of the Appellant and dismissing the Respondent's application for disability.

[10] On December 10, 2013, since the Respondent had still not provided to the Appellant the Consents he was required by order to provide, this Tribunal received a request from the Appellant for an order granting the appeal of the Appellant and dismissing the Respondent's application for disability.

[11] On March 14th, 2014, the Tribunal dismissed the request of the Appellant for an order granting the appeal of the Appellant and dismissing the Respondent's application for disability since it could not consider the request of the Appellant to be "a matter concerning a proceeding" as per the prescriptions of Section 4 of the *Social Security Tribunal Regulations* (the "*SST Regulations*").

THE LAW

[12] Section 4 of the *SST Regulations* provides that a party may request the Tribunal to provide for any matter concerning a proceeding.

[13] Section 68 of the *CPP Regulations* provides that where an Applicant claims that he is disabled, he shall supply certain information to the Minister. This includes information regarding his occupation and earnings, and to undergo such special examinations and provide reports as the Minister deems necessary for the purpose of determining the disability of that person.

ISSUES

[14] This Tribunal must decide whether or not it can order the Respondent to sign and return to the Appellant the Consent for Service Canada to obtain Personal Information, Consent to attend an Independent Medical Examination (IME), and the Request Sheet for

Additional Information forms and if the Appellant can seek an order dismissing the Respondent's claim for disability benefits should he fail to respect the order.

EVIDENCE

[15] The Appellant has informed the Tribunal that the Respondent still has not provided the Consents he was required to provide for a determination of whether he is disabled under the *CPP*. This fact is not disputed by the Respondent.

SUBMISSIONS

[16] The Appellant argued that the Request should be granted because:

- a) Section 68 of the *CPP Regulations* requires production of all relevant information by an applicant for *CPP* disability pension;
- b) The information requested is necessary for a proper determination of whether the Respondent is disabled under the *CPP*;
- c) The Appellant also has a common law right to obtain all relevant information to properly evaluate the Respondent's claim;
- d) Section 4 of the *SST Regulations* permits the making of the disclosure order requested;
- e) Section 64 of the *Department of Employment and Social Development Act* (the "*DESD Act*") permits such an order to be made by the Tribunal.

[17] The Respondent argued that the request should not be granted because:

- a) Nothing in the *DESD Act* or the *SST Regulations* confers jurisdiction on the SST to make the orders requested by the Appellant;
- b) The Tribunal already decided in the present file that it did not have jurisdiction to grant such orders.

ANALYSIS

[18] The statutory authority underlying the request of the Appellant is found in s. 68(1) and (2) of the *CPP Regulations*:

“68. (1) Where an applicant claims that he or some other person is disabled within the meaning of the Act, he shall supply the Minister with the following information in respect of the person whose disability is to be determined:

(a)) a report of any physical or mental disability including

(i) the nature, extent and prognosis of the disability,

(ii) the findings upon which the diagnosis and prognosis were made,

(iii) any limitation resulting from the disability, and

(iv) any other pertinent information, including recommendations for further diagnostic work or treatment, that may be relevant;

(b) a statement of that person’s occupation and earnings for the period commencing on the date upon which the applicant alleges that the disability commenced; and

(c)) a statement of that person’s education, employment experience and activities of daily life.

(2) In addition to the requirements of subsection (1), a person whose disability is to be or has been determined pursuant to the Act may be required from time to time by the Minister

(a)) to supply a statement of his occupation and earnings for any period; and

(b) to undergo such special examinations and to supply such reports as the Minister deems necessary for the purpose of determining the disability of that person.

[19] The Federal Court of Appeal has ruled that an applicant is obliged to comply with s.68 of the *CPP Regulations* – *Spears v. Canada (AG)*, 2004 FCA 193. More recently, the Federal Court determined that s. 68 of the *CPP Regulations* authorized the Minister to require that a person seeking *CPP* benefits provide medical information and submit to medical examination “from time to time” - *Zhang v. Canada (AG)*, 2012 FC 808.

[20] Does the Tribunal have jurisdiction to grant an order requiring the Respondent to sign and return to the Appellant the Consent for Service Canada to obtain Personal Information, Consent to attend an Independent Medical Examination (IME), and the Request Sheet for Additional Information forms?

[21] The Appellant argues that the Tribunal has the authority to do so on the basis of s.4 of the *SST Regulations* that allows for the Tribunal to provide for any matter concerning a proceeding upon the request of a party.

[22] Section 4 of the *SST Regulations* states the following:

“Requests to Tribunal

4. A party may request the Tribunal to provide for any matter concerning a proceeding, including the extension of a time limit imposed by these Regulations, by filing the request with the Tribunal.

[23] Section 64 of the *DESD Act* provides for what issues the SST can determine in a CPP disability case. The *SST Regulations* provide authority for how that is to be done. Section 4 of the *SST Regulations* does allow the Tribunal to provide for any matter concerning a proceeding upon the request of a party.

[24] A proceeding is defined as “the steps or measures taken in the course of an action” in Black’s Law Dictionary. The Tribunal finds that an order for disclosure is a step or measure taken in the course of the present appeal. It will allow the Tribunal to make a determination in respect of the Respondent’s disability application - *Zarb v. The Minister of Employment and Social Development Canada* (May 1st, 2014, CP29170).

[25] It is therefore within the Tribunal’s authority to make such an order of disclosure.

[26] The Appellant also requests permission to seek an order dismissing the Respondent’s claim for disability benefits should he fail to respect the order of disclosure. In a previous decision in the present file, the Tribunal dismissed a request for such an order (March 14, 2014). The Tribunal concluded that the request of the Appellant was not “a matter concerning a proceeding” as per the prescriptions of s.4 of the *SST Regulations*.

[27] However, failure of the Respondent to sign and to provide the required consent forms may lead the Tribunal to a finding of adverse inference against the Respondent on his medical condition and his capacity to work.

CONCLUSION

[28] The request by the Appellant is allowed in part.

[29] The Respondent is ordered to sign and provide to the Appellant the Consent for Service Canada to obtain personal information, the Consent to attend an Independent Medical Examination and a request Sheet for Additional Information Forms, at the latest November 14, 2014.

Pierre Lafontaine

Member, Appeal Division