

Citation: *I. D. v. Minister of Employment and Social Development*, 2015 SSTGDIS 54

Date: June 5, 2015

File number: GP-13-324

GENERAL DIVISION- Income Security Section

Between:

I. D.

Appellant

and

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

Respondent

Decision by: Raymond Raphael, Member, General Division - Income Security Section

REASONS AND DECISION

INTRODUCTION

[1] The Appellant's application for a *Canada Pension Plan* (CPP) disability pension was date stamped by the Respondent on May 30, 2012. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Tribunal on May 10, 2013.

ISSUE

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

THE LAW

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (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.

Applicable CPP Provisions

[5] Paragraph 44(1)(b) of the CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must:

- a) Be under 65 years of age;
- b) Not be in receipt of the CPP retirement pension;
- c) Be disabled; and
- d) Have made valid contributions to the CPP for not less than the Minimum Qualifying Period (MQP).

[6] The calculation of the MQP is important because a person must establish a severe and prolonged disability on or before the end of the MQP.

[7] Paragraph 42(2)(a) of the CPP defines disability as a physical or mental disability that is severe and prolonged. A person is considered to have a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death.

The MQP

[8] The Record of Earnings (ROE) indicates sufficient pensionable earnings in each year from 1991 through to 2007. Based on the applicable four of the last six years principle, this provides for an MQP extending until December 31, 2009.

[9] The Tribunal must decide whether it is satisfied that the Appellant has no reasonable chance of establishing a severe and prolonged disability on or before the MQP.

BACKGROUND AND EVIDENCE

[10] The Appellant was 55 years old on the December 31, 2009 MQP date; he is now 61 years old. In his CPP disability questionnaire, date stamped by the Respondent on May 30, 2012, the Appellant indicated that he has a Bachelor or Commerce degree as well as C.A and C.P.A diplomas. He noted that he last worked as the chief corporate and financial officer for D. T. Inc from August 1, 2007 until December 2007; he resigned due to a major disagreement with the chief executive officer. He claimed to be disabled as of late 2010 and indicated his main illness and impairment to be the sequelae from a stroke on September 18, 2011.

[11] A report dated May 6, 2012 from Dr. Bercuson, the Appellant's family doctor, accompanied the CPP application. The report diagnosis ischemic stroke (right coronary artery territory) on September 18, 2011; transient ischemic attack (TIA) in September 2010; and major depression with anxiety/anger following the stroke. The diagnosis indicates that the Appellant is unemployable.

[12] On March 25, 2014 Dr. Bercuson reported that the Appellant was a successful and high functioning individual until he suffered a right frontal stroke in September 2011. Dr. Bercuson noted that the Appellant has been her patient for over twenty years, and that until 2011 he was a vital intelligent man working successfully in a highly responsible and demanding position.

[13] In a letter to the Tribunal dated May 17, 2015 R. D., the Appellant's wife, summarized in detail how the Appellant has been deteriorating since his stroke in September 2011. In a letter dated May 27, 2015 responding to the Notice of Intent to Summarily Dismiss Ms. R. D. commented "we are all in agreement that after I. D.'s stroke in September 2011, there has been a significant deterioration in every which way with his well being, affecting both his physical and mental health."

SUBMISSIONS

[14] Ms. R. D. submitted that:

- a) When the Appellant stopped working in 2007, he became self-employed, managing his finances and exploring the possibility of starting up something for himself;
- b) Unfortunately his health kept deteriorating, but he was self-sufficient, managing his own investments etc. and a good provider for the family until his stroke in September 2011;
- c) When the application was submitted, they were informed by Service Canada that an individual could apply up to four years after stopping his earning period., which is December 2011;
- d) The Appellant is requesting that his claim be processed from September 2011 onwards;
- e) The medical reports confirm that the Appellant qualifies for disability.

[15] The Respondent submitted that:

- a) The Minister acknowledges that the Appellant has had significant health issues since his hospitalization in October 2010 and especially since his stroke in September 2011;

- b) However, there is no evidence to show that the Appellant was having any significant health issues at his December 31, 2009 MQP.

ANALYSIS

[16] 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. The Appellant responded by letter dated May 27, 2015.

[17] The Appellant takes the position that his disability commenced in late 2010, when he suffered a mini-stroke. This is almost one year after the MQP. There is no medical evidence to suggest that the Appellant was disabled at the December 31, 2009 MQP. The reports from Dr. Bercuson confirm that the Appellant's disability results from the sequelae of his stroke in September 2011, which is close to two years after the MQP.

[18] The Appellant requests that the Tribunal process his claim as of September 2011; however, the Tribunal has no jurisdiction to do this. 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.

[19] The Tribunal has determined that the Appellant has no reasonable chance of establishing a severe and prolonged disability on or before the MQP.

[20] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[21] The appeal is summarily dismissed.

Raymond Raphael
Member, General Division - Income Security