

Citation: *G. K. v. Minister of Employment and Social Development*, 2015 SSTGDIS 70

Date: July 10, 2015

File number: GP-15-388

GENERAL DIVISION - Income Security Section

Between:

G. K.

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 applied for CPP disability on January 31, 2011. On April 2, 2014 the General Division determined that the Appellant was disabled in accordance with the CPP criteria. The deemed date of disability was determined to be October 2009 and payments started as of February 2010.

[2] By letter dated June 30, 2014 the Respondent advised the Appellant that her disability benefit takes effect February 2010. She received \$502.90 per month for 2010 which was increased to \$511.45 per month for 2011. The Appellant received a retroactive payment of \$6,552.64. This was calculated as \$11,157.85 for disability benefits from February 2010 to November 2011 less the \$4,605.21 she had received for retirement benefits for the period December 2010 to July 2014. She had started to receive early retirement CPP in December, 2010.

[3] In the payment explanation statement the Respondent advised the Appellant that effective December 2011 (the month after the Appellant turned 65) her disability benefit was converted to a retirement pension. The monthly retirement pension for December 2011 was \$104.10 and subsequent payments have been adjusted in accordance with the CPP index.

[4] On August 20, 2014 the Appellant requested a reconsideration of the decision to have her disability pension automatically replaced by a retirement pension at age 65. The Respondent maintained its decision upon reconsideration and the Appellant appeal the reconsideration decision to the Social Security Tribunal.

[5] On December 16, 2014 the Social Security Tribunal Appeal Division referred this matter to the General Division for adjudication.

ISSUE

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

THE LAW

[7] 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.

[8] Subsection 20 (1) (a) of the Social Security Tribunal Regulations provides that if the constitutional validity, applicability, or operability of any provision of the *Canada Pension Plan* is to be put at issue before the Tribunal, the party raising the issue must file a notice with the Tribunal that sets out the provision that is at issue, and contains any submissions in support of the issue that is raised.

[9] 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

[10] Section 44 (1) (b) of the CPP provides that subject to certain contribution requirements a disability pension shall be paid to a contributor who has not reached 65 years of age, to whom no retirement pension is payable, and who is disabled.

[11] Section 70 (1) (d) provides that a disability pension ceases to be payable for the month for which the beneficiary reaches sixty-five years of age.

[12] Section 70 (2) provides that where a disability pension ceases to be payable to a person by reason of his having reached sixty-five years of age, an application under section 60 shall be deemed to have been made by and received from that person, in the month in which he reached that age, for a retirement pension to commence with the month following that month.

EVIDENCE

[13] On April 2, 2014 the Social Security Tribunal, General Division determined after a hearing that the Appellant was entitled to a disability benefit effective February 2010. The Appellant turned 65 in November 2011, and the Respondent replaced the Appellant's disability

benefit with a retirement pension effective December 2011 (the month following the Appellant's 65th birthday.

[14] The Appellant appeals the decision to replace the disability benefit with a retirement pension and takes the position that the Appellant "is a victim of circumstances and the times in every sense. What tragedies could have crossed the path of a young 21 year old woman.... did in fact occur. What collection of hurdles for her recovery, emotional well being, happiness, and financial security that could have been placed before her....in fact systematically did appear over a period of some 46 years now."

SUBMISSIONS

[15] The Appellant submits that the Tribunal should retroactively reintroduce the Appellant's disability pension beyond the age of 65 in the amount of \$511.45, which was the level that she was previously receiving.

[16] The Respondent submits that the terms of the CPP legislation specifically provide that a CPP disability pension is not payable after the age of 65 and that the Respondent has no discretion with respect to this requirement.

ANALYSIS

[17] 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 the Appellant was allowed a reasonable period of time to make submissions. The Respondent responded to the notice by letter dated June 22, 2015.

[18] The Appellant's response sets out detailed examples where the Appellant has been disadvantaged in respect to where the accident (which resulted in the loss of her left arm at a young age) occurred, when it occurred, and the support systems available to her. The response indicates that "one size does not fit all clients' individual needs" and that her financial status after the age of 65 is in dire and dismal circumstances. The response concludes that the Tribunal should proceed with a careful review of the Appellant's file, and that the Appellant and her

representative are open to meeting with the Tribunal Member if such a meeting would be helpful to the review process.

Potential Charter Issue

[19] In the Noticed of Intent to summarily dismiss dated May 27, 2015 the Tribunal advised the Appellant as follows.

In reviewing your appeal file, the Tribunal noted the following allegations:

“There is a marked difference in her future financial security when the Canada Pension Disability payments were reduced from some \$500.00 to the present Canada Pension level of \$109.92 per month after age 65. Since she sustained her injury at such a young age, she was unable to earn a work pension or invest in other retirement plans. She had nothing to invest! For the vast majority of Canadians, their work pensions and CPP benefits are the largest sums of income in their retirement. (The O.A.S., in itself, provides only a small measure of support to retired persons). ..

Keeping in mind that persons at minimum wage in Saskatchewan can earn some \$1600 a month (at an hourly rate of \$10 an hour) this is not an acceptable outcome for the client. **She feels that she is being discriminated against.**”(emphasis added by Appellant – see request for reconsideration dated August 20, 2014: GDR1-5 to 8.)

Please note that if you wish to pursue a constitutional challenge before the Social Security Tribunal of Canada, you must file a notice in accordance with paragraph 20(1)(a) of the *Social Security Tribunal Regulations* no later than **July 7, 2015**. A copy of this provision is attached. This particular notice is to be sent only to the Tribunal.

If you do not file the required notice by that date, your appeal will proceed as a regular appeal and you will not be given the opportunity to raise any constitutional issues during the appeal process.

[20] Although the Appellant responded to the Notice of Intent to summarily dismiss she did not file the required charter notice and, accordingly, the appeal proceeded as a regular appeal.

Application of CPP Principles

[21] Pursuant to the applicable CPP provisions (see paragraphs 10-12, supra) the Appellant’s disability pension ceased to be payable in November 2011 (the month she reached 65) and was replaced by a retirement pension effective December 2011.

[22] The Appellant has submitted that the Tribunal should consider that the Appellant has been a victim of long-standing systemic circumstances and that the amount paid for her disability pension should continue after she reached the age of 65.

[23] The Tribunal, however, is bound by the CPP provisions. It is not empowered to exercise any form of equitable power in respect of the appeals coming before it. It is a statutory decision-maker and is required to interpret and apply the provisions as they are set out in the CPP: *MSD v Kendall* (June 7, 2004), CP 21690 (PAB). The Tribunal has no authority to make exceptions to the provisions of the CPP nor can it render decisions on the basis of fairness, compassion, or extenuating circumstances.

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

CONCLUSION

[25] The appeal is summarily dismissed.

Raymond Raphael
Member, General Division - Income Security