

**Citation: *J. R. v. Minister of Employment and Social Development*, 2015 SSTGDIS 77**

**Date: July 20, 2015**

**File number: GP-14-424**

**GENERAL DIVISION - Income Security Section**

**Between:**

**J. R.**

**Appellant**

**and**

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

**Respondent**

**Decision by: Judy Daniels, Member, General Division - Income Security Section**

## REASONS AND DECISION

### INTRODUCTION

[1] In May 2013, the Appellant applied for a disability pension under the *Canada Pension Plan* (CPP). The Respondent denied the application at the initial level and at the reconsideration level. The Appellant appealed that decision to the Social Security Tribunal – General Division (the Tribunal) on April 8, 2014.

### 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.

[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 requirement that an applicant not be in receipt of the CPP retirement pension is also set out in subsection 70(3) of the CPP, which states that once a beneficiary starts to receive a

CPP retirement pension, that beneficiary cannot apply or re-apply, at any time, for a disability pension. There is an exception to this provision and it is found in section 66.1 of the CPP.

[7] Subsection 66.1(1) of the CPP and subsection 46.2(1) of the *Canada Pension Plan Regulations* (CPP Regulations) allow a beneficiary to cancel a pension after it has started if the request to cancel the pension is made, in writing, within six months after payment of the pension has started.

[8] Pursuant to subsection 66.1(1.1) of the CPP, the 6-month rule under subsection 66.1(1) does not apply to the cancellation of a retirement pension in favour of a disability benefit where an applicant is deemed to have become disabled in or after the month the retirement pension started.

[9] Subsection 66.1(1.1) of the CPP must be read with paragraph 42(2)(b) of the CPP, which states that the earliest a person can be deemed to be disabled is fifteen months before the date the disability application is received by the Respondent.

[10] The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favour of the disability pension where the disability application is made fifteen months or more after the retirement pension started to be paid.

## **EVIDENCE**

[11] The Appellant applied for a CPP retirement pension on December 6, 2011. The Appellant started receiving a CPP retirement pension effective January 2012.

[12] The Respondent submitted that the Appellant applied for a disability pension under the CPP in May 2013 and was subsequently denied both at the initial and reconsideration level.

## **SUBMISSIONS**

[13] In his Notice of Appeal, the Appellant submitted that:

- a) He was waiting for confirmation from the Workers Compensation Board regarding his hearing loss and therefore was unable to apply for a CPP disability pension within the timeframe; and
- b) His hearing loss has been progressive and he would like his disability pension approved.

[14] The Appellant did not make any submissions in response to the Notice of Intent to Summarily Dismiss.

[15] The Respondent submitted that:

- a) The Appellant has been in receipt of his CPP retirement pension since January 2012;
- b) The earliest date that a CPP disability pension can be granted is 15 months prior to the date of the Appellant's application, which in this case is February 2012; and
- c) The Appellant is unable to satisfy the legislative requirements for a disability pension.

## **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.

[17] 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. The Tribunal cannot use the principles of equity or consider extenuating circumstances to make its decision.

[18] The Tribunal finds that the effect of receiving a retirement pension is set out in subsection 70(3) of the CPP, which states that once a person starts to receive a CPP retirement pension, that person cannot apply or re-apply, at any time, for a disability pension. There is one exception to this provision and it is found in section 66.1 of the CPP.

[19] Subsection 66.1(1) of the CPP and subsection 46.2(1) of the CPP Regulations allow a beneficiary to cancel a pension after it has started if the request to cancel the pension is made, in writing, within six months after payment of the pension has started.

[20] Pursuant to subsection 66.1(1.1) of the CPP, the 6-month rule under subsection 66.1(1) does not apply to the cancellation of a retirement pension in favour of a disability pension where an applicant is deemed to have become disabled in or after the month the retirement pension started.

[21] Subsection 66.1(1.1) of the CPP must be read with paragraph 42(2)(b) of the CPP, which states that the earliest a person can be deemed to be disabled is fifteen months before the date the disability application is received by the Respondent.

[22] The effect of these provisions is that the CPP does not allow the cancellation of a retirement pension in favour of the disability pension where the disability pension application is made fifteen months or more after the retirement pension started to be paid.

[23] The Tribunal finds that the Appellant began receiving the retirement pension in January 2012. In order to cancel his retirement pension in favour of a disability pension, the Appellant would have to be deemed disabled before January 1, 2012.

[24] The Appellant's application for a CPP disability pension was received in May 2013. In accordance with paragraph 42(2)(b) of the CPP, the earliest the Appellant could be deemed to be disabled is February 2012, which is fifteen months before the disability pension application was made.

[25] As the Appellant's retirement pension started in January 2012 and because the earliest the Appellant could be deemed to be disabled is February 2012, it is not possible for the Appellant to be deemed to be disabled *before* receiving the retirement pension in January 2012. As a result, the law does not allow the Appellant to cancel the retirement pension in favour of the disability pension.

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

## **CONCLUSION**

[27] The appeal is summarily dismissed.

Judy Daniels  
Member, General Division - Income Security