



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. A. I.*, 2016 SSTADIS 74

Tribunal File Number: AD-15-1282

BETWEEN:

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

Appellant

and

**A. I.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Janet LEW

DATE OF DECISION: February 11, 2016

## REASONS AND DECISION

### OVERVIEW

[1] This case is about whether the General Division erred in law in calculating the deemed date of disability and the commencement date of payment of a Canada Pension Plan disability pension.

[2] The General Division rendered its decision on August 28, 2015. Leave to appeal was granted on December 10, 2015, on the basis that the appeal had a reasonable chance of success. The Appellant alleged that the General Division erred in law, in rendering its decision.

[3] Not having received any additional submissions and having determined that no further hearing is required, this appeal before me is proceeding pursuant to subsection 43(a) of the *Social Security Tribunal Regulations*.

### SUBMISSIONS

[4] The Appellant does not contest the finding of disability. However, counsel for the Appellant submits that the General Division erred with respect to the deemed date of disability and the effective payment date, by failing to apply the 15-month maximum retroactivity provisions set out in paragraph 42(2)(b) of the *Canada Pension Plan*. Counsel submits that the General Division also erred in its determination of the effective payment date, pursuant to section 69 of the *Canada Pension Plan*.

[5] Counsel for the Appellant submits that, based on the date of application of September 2011, the correct deemed date of disability pursuant to paragraph 42(2)(b) of the *Canada Pension Plan* is June 2010 – rather than January 2010 – and pursuant to section 69 of the *Canada Pension Plan*, payments would commence four months later, in October 2010.

## ANALYSIS

### (a) Applicability of standard of review analysis

[6] The Appellant did not address the applicability of a standard of review analysis. However, such an analysis may not be applicable when reviewing appeals of decisions rendered by the General Division: *Canada (Attorney General) v. Jean*, 2015 FCA 242 (CanLII) and *Maunder v. Canada (Attorney General)*, 2015 FCA 274.

[7] In *Jean*, the Federal Court of Appeal held that the mandate of the Appeal Division is conferred to it by sections 55 to 69 of the *Department of Employment and Social Development Act* (DESDA), where it hears appeals pursuant to subsection 58(1) of the DESDA. Subsection 58(1) of the DESDA sets out the grounds of appeal. The only grounds of appeal under subsection 58(1) are as follows:

- (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.

[8] The Federal Court of Appeal counsels us to “refrain from borrowing from the terminology and the spirit of judicial review in an administrative appeal context” and suggests that the Appeal Division should restrict itself to determining whether the General Division erred in law, as the case may be.

### (b) Did the General Division err in law?

[9] Counsel for the Appellant relies on paragraph 42(2)(b) of the *Canada Pension Plan*, in submitting that there is a 15-month retroactivity in determining an appellant’s deemed date of

disability, from the time he or she makes an application. Paragraph 42(2)(b) of the *Canada Pension Plan* very clearly sets out when a person is deemed to have become disabled. The paragraph reads, in part, that “in no case shall a person . . . be deemed to have become disabled earlier than fifteen months before the time of the making of any application in respect of which the determination is made” (my emphasis).

[10] As counsel for the Appellant points out, the Respondent applied for a Canada Pension Plan disability pension in September 2011. Applying the provisions of paragraph 42(2)(b) of the *Canada Pension Plan*, 15-months retroactive from September 2011 is June 2010, rather than January 2010.

[11] It is unclear how the General Division came to this error. It may be that the error of the General Division arose from undue haste and carelessness, and that the date of January 2010 simply represents a typographical error or mathematical miscalculation. If so, it is regrettable if the Respondent was led to believe that she should be entitled to a greater payment than the *Canada Pension Plan* permits. However, the length of retroactivity is statutorily mandated and cannot be overcome.

[12] A deemed date of disability of June 2010 results in a commencement date of payment of a disability pension of October 2010. It seems that the General Division Member correctly applied section 69 of the *Canada Pension Plan*, in that she calculated payments would commence four months later from the deemed date of disability, but having mis-applied paragraph 42(2)(b) of the *Canada Pension Plan* or having miscalculated the deemed date of disability in the first instance necessarily resulted in an error in the date of commencement of a disability pension.

## **REMEDIES**

[13] The appeal is granted. Subsection 59(1) of the DESDA sets out the powers of the Appeal Division and includes the authority to give the decision that the General Division should have given. I find that it is appropriate in the circumstances of this case to exercise my powers accordingly. Pursuant to paragraph 42(2)(b) of the *Canada Pension Plan*, the Respondent is deemed to have become disabled as of June 2010, which is 15 months before the date her

application was received. Pursuant to section 69 of the *Canada Pension Plan*, payment of a Canada Pension Plan disability pension commences effective October 2010, which is four months after the date the Respondent is deemed to have become disabled.

*Janet Lew*

Member, Appeal Division