



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. P. C.*, 2016 SSTADIS 145

Tribunal File Number: AD-16-180

BETWEEN:

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

Appellant

and

**P. C.**

Respondent

---

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

---

DECISION BY: Janet Lew

DATE OF DECISION: April 26, 2016

## REASONS AND DECISION

### OVERVIEW

[1] This case is about whether the General Division erred in determining that the Respondent was entitled to a Canada Pension Plan disability pension, despite finding that the date of onset of disability was after the end of the minimum qualifying period.

[2] The General Division concluded that the Respondent had a severe and prolonged disability in July 2012 and that, therefore, according to section 69 of the *Canada Pension Plan*, payment of a Canada Pension Plan disability pension ought to commence as of November 2012.

[3] The Appellant filed an Application Requesting Leave to Appeal to the Appeal Division, on the grounds that the General Division erred in law because the Respondent's date of onset of disability occurred after the end of her minimum qualifying period on December 31, 2011. Therefore, she was not entitled to a disability pension. I granted leave to appeal on this basis.

[4] The Appellant relied on its submissions in the leave materials. The Respondent filed submissions on March 14, 2016. Having determined that no further hearing is required, the appeal before me is proceeding pursuant to subsection 43(a) of the *Social Security Tribunal Regulations*.

### ISSUE

[5] The primary issue before me is whether the Respondent's date of onset of disability is after the end of her minimum qualifying period on December 31, 2011. If so, the General Division erred in determining that she was entitled to a Canada Pension Plan disability pension.

## GENERAL DIVISION DECISION

[6] At paragraph 5 of its decision, the General Division stated that the calculation of the minimum qualifying period is important because a person must establish a severe and prolonged disability on or before the end of the minimum qualifying period. In this particular case, the General Division indicated that the parties agreed and that it found that the minimum qualifying period ended in December 2011. The General Division identified the issue it had to determine as being whether it was more likely than not that the Respondent had a severe and prolonged disability on or before the end of the minimum qualifying period. The General Division repeated the issue before it at least twice, at paragraphs 8 and 39.

[7] At paragraph 40, the General Division wrote:

*At the time of the MQP, the [Respondent] was suffering from back pain and asthma. The question is how these conditions interfered with her ability to regularly pursue any substantially gainful employment by December, 2011. The Tribunal finds that it does for the following reasons.* (My emphasis)

and at paragraph 41:

*. . . While there is not a significant amount of medical evidence regarding the [Respondent]’s medical condition in 2011, the Tribunal must consider the best evidence available. This evidence leads to the conclusion that the [Respondent] had severe back pain in 2011 and that it interfered with her ability to work in a significant manner.* (My emphasis)

and at paragraph 48:

*The [Respondent] testified that there was some improvement in her condition after 2009. This is when she saw Dr. Benitez-Lazo. However, even with the improvement, Dr. Benitez-Lazo was still of the opinion in 2015 that she was unable to work. There is insufficient evidence to conclude that the [Respondent] improved to the point where she no longer had a severe disability. Further, there is insufficient evidence to conclude that the [Respondent] was capable of regularly pursue any substantially gainful employment after the MQP of 2011. Instead, the [Respondent] has testified in a compelling manner regarding her ongoing debilitating medical conditions.* (My emphasis)

and finally at paragraph 49:

*The weight of the evidence leads to the conclusion that the [Respondent]’s severe disability was long continued and of an indefinite duration from before the time of*

*the MQP. For these reasons, the Tribunal concludes that the [Respondent]’s severe disability was also a prolonged disability.*

[8] At paragraph 50, the General Division concluded that the “[Respondent] *had a severe and prolonged disability in July, 2012, when Dr. Tung confirmed that she was no longer able to work*”. The General Division based the commencement date of payments of a disability pension on this date.

## **SUBMISSIONS**

[9] The Appellant does not contest the finding that the Respondent was disabled, but submits that the General Division erred in law by failing to find the Respondent disabled prior to the end of her minimum qualifying period on December 31, 2011. Here, the General Division determined that the Respondent was disabled in July 2012, which was seven months after the date that she was last eligible to receive benefits.

[10] The Appellant’s counsel argues that subparagraph 44(1)(b)(i) of the *Canada Pension Plan* stipulates that the Respondent had to have been found disabled on or before the end of her minimum qualifying period on December 31, 2011, and that awarding a pension based on a date onset of disability after this date resulted in an error of law.

[11] The Respondent’s counsel, on the other hand, submits that the General Division “*obviously and plainly*” found the Appellant disabled prior to December 2011, and that the conclusion set out in paragraph 50 was a mistake. The Respondent’s counsel relies on paragraphs 41, 43, 45, 48 and 49 of the decision, and argues that they indicate that the General Division found the Appellant disabled prior to the end of her minimum qualifying period. The Respondent’s counsel suggests that the July 2012 date simply relates to when the Appellant first applied for a disability pension.

## ANALYSIS

[12] I concur with the submissions of the Appellant's counsel that the General Division erred in concluding that the Respondent was entitled to a disability pension even though it found that the date of onset of her disability occurred after the end of her minimum qualifying period. The Respondent was therefore not entitled to a Canada Pension Plan disability pension if indeed her disability arose after the end of her minimum qualifying period. As the General Division noted throughout its decision, a person must establish that the date of onset of a severe and prolonged disability occurred on or before the end of the minimum qualifying period. If the date of onset of disability falls after the minimum qualifying period, there is no entitlement to a Canada Pension Plan disability pension.

[13] The General Division found the date of onset of disability to have been July 2012, which falls after the minimum qualifying period. This could not have been a typographical error, as the General Division explained how it arrived at this date. The General Division confirmed that the Appellant was no longer able to work as of July 2012.

[14] The Respondent's counsel suggests that there is no evidence that the Appellant was unable to work as of July 2012. However there is a medical opinion dated July 9, 2012 from the family physician in which he wrote, "... *unable to work because of persistent lower back pain*". It appears that the General Division interpreted this opinion to mean that the Appellant was unable to work as of July 2012. The Respondent's counsel contends that the General Division's conclusion in paragraph 50 that the Appellant became disabled in July 2012 is at complete odds with the analysis, which suggests that it found the Respondent to have been severely disabled by her minimum qualifying date of December 31, 2011.

[15] Had the General Division found that the evidence could not support a finding of disability until after the minimum qualifying date, I would have, for that reason alone, allowed the appeal and determined that the Respondent was not entitled to a disability pension.

[16] However, the General Division's analysis conveys the impression that it was satisfied, on a balance of probabilities, that the Respondent had a severe and prolonged

disability on or before the end of the minimum qualifying period. Paragraphs 40, 41, 48 to 49 of the General Division's decision indicate that it found the Respondent to have severe pain in 2011 and "*ongoing debilitating medical conditions*" which interfered with her ability to work in a significant manner or interfered with her ability to regularly pursue any substantially gainful employment by December 2011.

[17] The Respondent's counsel submits that I should find that the Appellant "*was disabled as of the* [minimum qualifying period]". However, that would require me to undertake an assessment of the evidence. Such an exercise more appropriately resides with the General Division.

## **CONCLUSION**

[18] The appeal is allowed and the matter remitted to the General Division for a redetermination, with a direction that it establish the date of onset of disability for the Respondent.

*Janet Lew*  
Member, Appeal Division