



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *L. M. v. Minister of Employment and Social Development*, 2016 SSTADIS 200

Tribunal File Number: AD-16-240

BETWEEN:

L. M.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Hazelyn Ross

DATE OF DECISION: June 3, 2016

DECISION

[1] The Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), dismisses the appeal.

INTRODUCTION

[2] This is an appeal of a decision of the General Division of the Tribunal issued January 3, 2016 that dismissed the Appellant's appeal from a reconsideration decision that refused to cancel his retirement pension in favour of a disability pension.

THE FACTUAL BACKGROUND

[3] The Appellant is in receipt of a *Canada Pension Plan*, (CPP), retirement pension, which he began to receive as of December 2011. He applied for a CPP disability pension on August 22, 2014. (GD2-13) The Respondent denied the application on the basis that it had been made more than fifteen months after the Appellant began to receive a retirement pension. The Respondent upheld its decision on reconsideration. The Appellant appealed the reconsideration decision to the General Division of the Tribunal which dismissed his appeal summarily.

[4] The Appellant now appeals from the General Division decision.

ISSUE

[5] Did the General Division err when it dismissed the appeal summarily?

THE LAW

[6] The following statutory provisions govern this appeal.

Grounds of appeal:-

[7] An appellant can appeal to the Appeal Division of the Tribunal on the basis of the three grounds of appeal found at subsection 58(1) of the *Department of Employment and Social Development Act*, (the DESD Act), namely:-

- 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.

Payment of a disability pension:-

[8] Section 44 of the CPP provides for payment of a Disability pension on certain conditions. In short, a disability pension is payable to a person who has made the requisite contributions to the CPP, and who is disabled as defined by section 42 of the CPP. In addition, the contributor must not be in receipt of a CPP retirement pension

Benefits payable

44 (1) Subject to this Part,

(a) a retirement pension shall be paid to a contributor who has reached sixty years of age;

(b) a disability pension shall be paid to a contributor who has not reached sixty- five years of age, to whom no retirement pension is payable, who is disabled and who

(i) has made contributions for not less than the minimum qualifying period,

(ii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if an application for a disability pension had been received before the contributor's application for a disability pension was actually received, or

(iii) is a contributor to whom a disability pension would have been payable at the time the contributor is deemed to have become disabled if a division of unadjusted pensionable earnings that was made under section 55 or 55.1 had not been made;

Cancellation of a retirement pension:-

[9] The CPP also provides for cancellation of a retirement pension in favour of a disability benefit, again on certain conditions being met. Subsections 66.1 and 66.1 (1.1) govern the application. These statutory provisions provide,

66.1. Request to cancel benefit – (1) A beneficiary may, in prescribed manner and within the prescribed time interval after payment of a benefit has commenced request cancellation of that benefit.

(1.1) Exception – subsection (1) does not apply to the cancellation of a retirement pension in favour of a disability benefit where an Appellant for a disability benefit under this Act or under a provincial pension plan is in receipt of a retirement pension and the Appellant is deemed to have become disabled for the purposes of entitlement to the disability benefit in or after the month for which the retirement pension first became payable.

[10] The Application is also governed by 46.2. (1) of the *Social Security Tribunal Regulations (the Regulations)*, S.O.R./2013-60 as amended by S.C.2013, c. 40, s. 2, namely,

46.2. (1) A beneficiary may submit to the Minister, within the interval between the date of commencement of payment of the benefit and the expiration of six months after that date, a request in writing that the benefit be cancelled.

SUBMISSIONS

[11] The Appellant made the same submissions on appeal as he did before the General Division. He states he had been unaware that he was receiving a retirement pension as opposed to a disability pension. He thought the Federal Government was aware that he was receiving provincial disability benefits and was sending him more of the same. He states he was unaware that he could cancel the retirement pension for a disability pension. (AD1-2)

[12] As support for his position the Applicant also submitted copies of his prescriptions as well as a copy of the CPP medical report. (AD3)

[13] The Respondent's representative submitted that the General Division came to the right decision concerning the Appellant's eligibility for a disability pension; had cited the correct law; and made no error in applying the law to the facts of the Appellant's case and the decision

to dismiss the appeal summarily was correct. The Respondent's representative made the further submission that the Appellant's appeal does not raise any ground of appeal under subsection 58(1) of the DESD Act. (AD2-1)

ANALYSIS

Did the General Division cite the correct legal provision(s)?

[14] With regard to summary dismissal of an appeal, Section 53 of the Department of Employment and Social Development Act, (DESD Act), states that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.¹ The General Division identified DESD subsection 53(1) as the applicable law at paragraph 3 of its decision. With regard to summary dismissal of appeals, the Appeal Division finds that the General Division identified the correct legal provision.

[15] The specific issue raised in this appeal is whether the Applicant's retirement pension could be cancelled in favour of a disability pension. The General Division identified the relevant statutory provisions as being subsections 70(3) 66.1 (1.1) of the CPP and section 46.2. (1) of the *Regulations*.

[16] The General Division discussed the legal effect of the statutory provisions. Generally and then analysed and discussed their combined impact on the circumstances of the Appellant's case. The General Division concluded that the CPP does not allow the cancellation of a retirement pension in favour of a disability pension where the application for a disability is made fifteen months or more after the retirement pension started to be paid.

[17] The General Division found that while the Appellant began to receive the retirement pension in December 2011 he did not apply within six months of the commencement of the retirement pension to have it cancelled as is required by subsection 46.2. (1) of the *Regulations*. The Application was made almost three years later in August 2014. The General Division concluded that the operation of the relevant sections of the CPP precluded the cancellation of the Appellant's retirement pension in favour of a disability pension. The Appeal Division concurs. In

¹ 53 (1) The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

the view of the Appeal Division the General Division properly and correctly applied the legal provisions to the facts of the Appellant's case. The decision does not reveal any error of law, whether appearing on the face of the record nor otherwise, neither does the decision reveal any error of fact; nor breach of a principle of natural justice.

[18] The Appeal Division cites and relies on the persuasive decision by the former Pension Appeals Board in *MSD v. Desjardins* (October 5, 2006) CP 23966 at paras. 17 and 18)

Was summary dismissal of the appeal appropriate?

[19] "Summary Dismissal" is required where an appeal has no reasonable chance of success. Members of the Appeal Division have articulated the test for summary dismissal as "whether it is plain and obvious on the face of the record that an appeal is bound to fail." *M.C. v. Canada Employment Commission*, 2015 SSTAD 237. Notwithstanding the Appellant's position that he is entitled to a disability pension the Appeal Division finds that his appeal did not have a reasonable chance of success.

[20] Subsection 46.2. (1) of the *Regulations* mandated that the Appellant had to make the request to cancel the retirement pension within six months of receiving it. There is no dispute that he did not do so until some thirty-two months had passed. Therefore, by virtue of the operation of CPP subsection 66.1(1.1) and subsection 46.2. (1) of the *Regulations* the request was made too late. The appeal did not have a reasonable chance of success. The General Division properly invoked and applied section 53(1) of the DESD Act.

[21] In light of the above, the Tribunal finds that the General Division did not commit any reviewable error when it summarily dismissed the Appellant's appeal.

CONCLUSION

[22] For the above reasons, the appeal is dismissed.

Hazelyn Ross
Member, Appeal Division