



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *S. S. v. Minister of Employment and Social Development*, 2016 SSTADIS 211

Tribunal File Number: AD-16-401

BETWEEN:

**S. S.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Divisionn**

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DECISION BY: Janet Lew

DATE OF DECISION: June 15, 2016

## REASONS AND DECISION

[1] This appeal is about whether the General Division erred in law in identifying the appropriate test for a “substantially gainful occupation”.

[2] I granted leave to appeal on April 4, 2016, on the ground that the General Division may have erred in law in identifying the appropriate test for a “*substantially gainful occupation*” and that as a result, it may have erred in its analysis regarding whether the Applicant’s ongoing part-time employment in 2015 constituted “*substantially gainful employment*”. In particular, the General Division appeared not to have given any consideration to section 68.1 of the *Canada Pension Plan Regulations*.

[3] On June 3, 2016, the Respondent conceded the appeal and consented to the matter being returned to the General Division for redetermination.

[4] As I indicated in my leave decision, the General Division appears to have determined whether the Applicant was engaged in substantially gainful occupation by relying on jurisprudence dating between 1994 and 2006. Section 68.1 of the *Canada Pension Plan Regulations*, which came into force on May 29, 2014, defines “substantially gainful” for the purpose of subparagraph 42(2)(a)(i) of the *Canada Pension Plan*. The subparagraph reads as follows:

**68.1 (1)** For the purpose of subparagraph 42(2)(a)(i) of the Act, “substantially gainful”, in respect of an occupation, describes an occupation that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension. The amount is determined by the formula.

$$(A \times B) + C$$

Where

- A is .25 the Maximum Pensionable Earnings Average;
- B is .75; and
- C is the flat rate benefit, calculated as provided in subsection 56(2) of the Act, x 12

[5] The General Division did not cite and seemingly did not consider section 68.1 of the *Regulations*, in determining whether the Applicant's ongoing part-time employment in 2015 constituted "*substantially gainful employment*". On this basis, and given the Respondent's concession, the appeal is allowed.

## **CONCLUSION**

[6] The appeal is allowed and the matter remitted to a different member of the General Division for a new hearing.

*Janet Lew*

Member, Appeal Division