



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. D. I.*, 2016 SSTADIS 274

Tribunal File Number: AD-16-724

BETWEEN:

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

Applicant/Appellant

and

D. I.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Shu-Tai Cheng

DATE OF DECISION: 18 July 2016

REASONS AND DECISION

INTRODUCTION

[1] On February 23, 2016, the General Division (GD) of the Social Security Tribunal of Canada (Tribunal) allowed the Respondent's appeal of a decision of the Minister of Employment and Social Development (Appellant). The Respondent had been denied benefits on a claim for a disability pension under the *Canada Pension Plan* (CPP), because the Appellant had determined that the Respondent did not have a severe disability on or before his Minimum Qualifying Period (MQP). The Respondent appealed to the GD of the Tribunal.

[2] The Respondent and a witness attended the GD hearing, which was held in person on February 17, 2016. The Appellant did not attend.

[3] The GD determined that:

- a) The Respondent's MQP is December 31, 2000;
- b) He was a credible witness who was eager to work and attempted to return to work with his medical conditions but suffered a heart attack after each attempt;
- c) He made genuine attempts to find and maintain steady employment, but his disability rendered him incapable of pursuing with consistent frequency any truly remunerative occupation;
- d) His disabling conditions are long-standing, no cure is anticipated and the prognosis is fair to poor;
- e) The Respondent had a severe and prolonged disability in December 1998, prior to his MQP; and
- f) Because his CPP application was late, the Respondent is deemed disabled in January 2012 and CPP disability pension benefits will start as of May 2012.

[4] Based on these conclusions, the GD allowed the appeal.

[5] The Appellant filed an application for leave to appeal (Application) with the Appeal Division (AD) of the Tribunal on May 24, 2016, within the appeal period.

ISSUES

[6] Whether the appeal has a reasonable chance of success.

[7] If the appeal is determined to have a reasonable chance of success, should a decision be rendered on the record or does the matter require a hearing?

[8] Then the AD must decide whether to dismiss the appeal, give the decision that the GD should have given, refer the matter back to the GD for reconsideration in accordance with any directions that the AD considers appropriate or confirm, rescind or vary the decision of the GD in whole or in part.

LAW AND ANALYSIS

[9] Pursuant to paragraph 57(1)(a) of the *Department of Employment and Social Development Act* (DESD Act), an application must be made to the AD within 30 days after the day on which the decision appealed from was communicated to the appellant.

[10] According to subsections 56(1) and 58(3) of the DESD Act, “an appeal to the Appeal Division may only be brought if leave to appeal is granted” and “the Appeal Division must either grant or refuse leave to appeal.”

[11] Subsection 58(2) of the DESD Act provides that “leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.”

[12] Subsection 58(1) of the DESD Act states that the only grounds of appeal are the following:

- (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.

[13] The Appellant's grounds of appeal are limited to the effective payment date of the Respondent's CPP disability pension and the established date of onset of the Respondent's disability. The Appellant does not contest that the Respondent was disabled as of July 2012 which is his maximum retroactivity under the CPP.

[14] The Appellant's reasons for appeal can be summarized as follows:

- a) The CPP application was made in April 2013;
- b) The GD allowed the appeal and determined an MQP of December 31, 2000;
- c) The Respondent's MQP calculated with his own earnings was October 31, 1998;
- d) The Respondent submitted a Division of Unadjusted Pensionable Earnings (DUPE) in May 2013; he required this division in order to provide him with an MQP of December 31, 2000;
- e) The GD erred in law when it overlooked subsection 55.1(c)(i) of the CPP in determining the established date of onset as December 1998;
- f) The specific error is that the GD did not take into consideration that the Respondent and his spouse had separated in June 1999 and had not yet been separated from his spouse for the mandatory one year period; and
- g) Therefore, a benefit cannot be paid with the established date of onset on the basis of the MQP used at the hearing of December 31, 2000.

[15] The Appellant submits that leave to appeal be granted and the appeal should be allowed. In particular, the Appellant submits that the AD should give the decision that the GD ought to have given, which is that the Respondent was found to be disabled as of October 1998, his MQP, and for payment purposes he is deemed disabled in January 2012 and payments start as of May 2012.

Leave to Appeal

[16] The GD decision stated:

[34] The Tribunal must, therefore, decide if it is more likely than not that the Appellant had a severe and prolonged disability on or before December 31, 2000, the date of the MQP and continuously thereafter.

[...]

[53] The Tribunal finds that the Appellant had a severe and prolonged disability in December 1998, when he was terminated by his employer because he could no longer carry out his duties as a caretaker. For payment purposes, a person cannot be deemed disabled more than fifteen months before the Respondent received the application for a disability pension (paragraph 42(2)(b) CPP). The application was received in April 2013; therefore the Appellant is deemed disabled in January 2012. According to section 69 of the CPP, payments start four months after the deemed date of disability. Payments will start as of May, 2012.

[17] Pursuant to subparagraph 44(1)(b)(ii) of the CPP, the Respondent last met the contributory requirements as of December 31, 1997. He also made contributions in 1998 which were less than the Year's Basic Exemption.

[18] According to section 19 of the CPP, proration may be allowed for the year the contributory period ends because of disability under the CPP. The Respondent's earnings in 1998, if he is determined to have become disabled between January 1, 1998 and October 31, 1998 would be sufficient to give rise to valid contributions. To be eligible for benefits, the Respondent would have to be found to be disabled between January 1, 1998 and October 31, 1998.

[19] The GD erred in law when it determined an established date of onset as December 1998.

[20] On the ground that there may be an error of law, I am satisfied that the appeal has a reasonable chance of success.

Error of Law

[21] Subsection 59(1) of the DESD Act sets out the powers of the AD. It states: The Appeal Division may dismiss the appeal, give the decision that the General Division should have given,

refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

[22] This appeal proceeded on the basis of the record for the following reasons:

- a) The lack of complexity of the issue(s) under appeal;
- b) The request of the Appellant; and
- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.

[23] Based on my review of the GD decision and the appeal record, I find that:

- a) To be eligible for disability benefits, the Respondent would have had to be found disabled between January 1, 1998 and October 31, 1998;
- b) October 1998 is the established date of onset of the Respondent's disability (and not December 31, 1998);
- c) The deemed date of onset is January 2012 (this does not vary the GD decision); and
- d) The GD Respondent's effective payment date is May 2012 (this does not vary the GD decision).

[24] Given all of the above, I allow the appeal and give the decision that the GD should have given.

[25] In the circumstances, I encourage the Appellant to process the Respondent's payments forthwith.

CONCLUSION

[26] The application for leave to appeal is granted.

[27] The appeal is allowed in accordance with paragraph [23] to [25] above.

Shu-Tai Cheng
Member, Appeal Division