



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. S. R.*, 2016 SSTADIS 364

Tribunal File Number: AD-16-986

BETWEEN:

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

Applicant

and

**S. R.**

Respondent

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

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Leave to Appeal Decision by: Janet Lew

Date of Decision: September 16, 2016

## REASONS AND DECISION

### OVERVIEW

[1] At its core, this case is about whether the date of payment of a Canada Pension Plan disability pension should be based exclusively on the maximum retroactivity provisions under paragraph 42(2)(b) of the *Canada Pension Plan*.

[2] The Applicant seeks leave to appeal the decision of the General Division dated May 2, 2016. The General Division determined that the Respondent has a severe and prolonged disability and that she became disabled in May 2013, when she stopped working due to chronic back pain. The Respondent had filed her application for the disability pension in September 2013. Accordingly, the General Division deemed the Respondent disabled in June 2012 and that payment of a disability pension should commence as of October 2012, four months after the deemed date of disability. The Applicant filed an application requesting leave to appeal to the Appeal Division on August 3, 2016, on the basis that the General Division erred in law in its application of paragraph 42(2)(b) of the *Canada Pension Plan* and that it thereby erred in its calculation of the effective payment date. For the Applicant to succeed on this application, I must be satisfied that the appeal has a reasonable chance of success.

### SUBMISSIONS

[3] The Applicant does not contest the finding of disability. However, counsel for the Applicant submits that the General Division erred in applying the maximum retroactivity provisions of paragraph 42(2)(b) of the *Canada Pension Plan* and in deeming the Respondent disabled 15 months before she made her application for a disability pension. The Applicant argues that under paragraph 42(2)(b) of the *Canada Pension Plan*, the earliest that the Respondent could be deemed disabled was May 2013, when she in fact became disabled. And, pursuant to section 69 of the *Canada Pension Plan*, payment of a disability pension therefore would commence four months later in September 2013.

## ANALYSIS

[4] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to 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.

[5] Before I can consider granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the enumerated grounds of appeal under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[6] The Applicant indicates that the General Division correctly noted that the Applicant received the Respondent's application for a disability pension in September 2013.

[7] Paragraph 42(2)(b) of the *Canada Pension Plan* provides 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 other words, the maximum retroactivity permitted under the *Canada Pension Plan* is 15 months prior to the date of application. However, it does not follow that the maximum retroactivity provisions under the *Canada Pension Plan* are applicable in all cases. As the Applicant notes, it is trite law that an individual cannot simultaneously contribute to the Canada Pension Plan and at the same time receive a Canada Pension Plan disability pension. In this particular case, as the Respondent was regularly and substantially gainfully employed from June 2012 until she stopped working in May 2013, she cannot avail herself of the maximum retroactivity provisions, and the earliest that she could be deemed to be disabled is the date when she stopped working in May 2013.

[8] The Applicant submits that, based on the erroneous deemed date of disability, the General Division further erred in its determination of the effective payment date, pursuant to section 69 of the *Canada Pension Plan*, identifying the effective date of payment as October 2012. The Applicant further submits that, as the Respondent should have been deemed disabled in May 2013, the correct effective date of payment would be four months later, in September 2013.

[9] I am satisfied that the appeal has a reasonable chance of success based on the ground that the General Division may have erred in law by applying the maximum retroactivity provisions in determining the commencement date of payment of a Canada Pension Plan disability pension, without regard to the date of effective disability.

## **CONCLUSION**

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

[11] This decision granting leave to appeal does not in any way prejudice the result of the appeal on the merits of the case. However, given the strength of the ground of appeal and the legal nature of the issue involved on appeal, I am inclined to proceed to hearing the matter on the record at the earliest opportunity available, short of any compelling submissions from the Respondent. The parties may make submissions within the time permitted under the DESDA, or may, by consent of the parties, seek to abridge the time to respond.

Janet Lew  
Member, Appeal Division