



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. J. R.*, 2016 SSTADIS 369

Tribunal File Number: AD-16-1065

BETWEEN:

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

Applicant

and

**J. 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 19, 2016

## **REASONS AND DECISION**

### **OVERVIEW**

[1] The Applicant seeks leave to appeal the decision of the General Division dated June 22, 2016. The General Division found the Respondent had a severe and prolonged disability, with a deemed date of disability of December 2012. The General Division determined that payment of a disability pension should commence effective April 2013, pursuant to section 69 of the *Canada Pension Plan*. The Applicant filed an Application Requesting Leave to Appeal on August 29, 2016, on the basis that the General Division failed to consider the division of unadjusted pensionable earnings when determining the effective date of payment of a disability pension. To succeed on this application, the Applicant must satisfy me that the appeal has a reasonable chance of success.

### **SUBMISSIONS**

[2] The Applicant does not contest the finding that the Respondent is disabled but submits that the General Division erred in law by establishing the Respondent's date of payment without considering subsection 55.2(9) of the CPP. The Applicant argues that subsection 55.2(9) of the CPP takes precedence over section 69 of the CPP, and that, as such, payments of a disability pension could only commence in March 2014, the month following the month in which the credit split took place.

### **ANALYSIS**

[3] Subsection 58(1) of the *Department of Employment and Social Development Act* 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.

[4] I need to be satisfied that the reasons for appeal fall within one of the grounds of appeal and that the appeal has a reasonable chance of success before granting leave. The Federal Court of Canada endorsed this approach in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

[5] The Respondent had to rely upon a division of unadjusted pensionable earnings to have a minimum qualifying period that ended on December 31, 2012.

[6] Section 69 of the CPP reads as follows:

*Commencement of pension*

**69.** Subject to section 62, where payment of a disability pension is approved, the pension is payable for each month commencing with the fourth month following the month in which the applicant became disabled, except that where the applicant was, at any time during the five year period next before the month in which the applicant became disabled as a result of which the payment is approved, in receipt of a disability pension payable under this Act or under a provincial pension plan,

(a) the pension is payable for each month commencing with the month next following the month in which the applicant became disabled as a result of which the payment is approved; and

(b) the reference to “fifteen months” in paragraph 42(2)(b) shall be read as a reference to “twelve months”.

[7] Subsection 55.2(9) of the CPP reads as follows:

*Payment of benefit*

(9) Where there is a division under section 55.1 and a benefit is or becomes payable under this Act to or in respect of either of the persons subject to the division for a month not later than the month following the month in which the division takes place, the basic amount of the benefit shall be calculated and adjusted in accordance with section 46 and adjusted in accordance with subsection 45(2) but subject to the division,

and the adjusted benefit shall be paid effective the month following the month in which the division takes place but in no case shall a benefit that was not payable in the absence of the division be paid in respect of the month in which the division takes place or any prior month.

[8] It appears that subsection 55.2(9) of the CPP takes precedence over section 69 of the CPP, which changes the effective date when the disability pension commences. I am satisfied that there is a reasonable chance of success on the ground that the General Division erred in law by failing to consider the effect of subsection 55.2(9) of the CPP when determining the effective date of commencement of payment of the disability pension to the Respondent.

### **CONCLUSION**

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

[10] This decision granting leave does not in any way prejudice the result of the appeal on the merits of the case.

Janet Lew  
Member, Appeal Division