



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *V. P. v. Minister of Employment and Social Development*, 2016 SSTADIS 394

Tribunal File Number: AD-16-912

BETWEEN:

**V. P.**

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: ~~September 7, 2016~~ October 25, 2016

**Revised decision – corrections inserted into the main text of the original decision**

**Canada** 

## REASONS AND DECISION

### INTRODUCTION

[1] This is an appeal from the decision of the General Division of the Social Security Tribunal of Canada, (the Tribunal), issued on March 23, 2015. It involves the cancellation of a retirement pension and the substitution of a disability pension under the *Canada Pension Plan*, (the CPP). The General Division determined that on the facts of the Appellant's case this cancellation and substitution could not be effected.

[2] On July 5, 2016 the Appeal Division of the Tribunal received an "application for leave to appeal" the General Division decision.

[3] This appeal proceeded On the Record for the following reasons:

- a) The Member has determined that no further hearing is required.
- b) Pursuant to subsection 37(a) of the *Social Security Tribunal Regulations*, the Member has determined that no further hearing is required.
- c) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and quickly as circumstances, fairness and natural justice permit.
- d) The issues in this appeal are discrete and clear cut, therefore, it was not necessary that a hearing be held in order for the Appeal Division to render a decision.

### PRELIMINARY MATTERS

[4] While this matter came to the Appeal Division as a request for leave to appeal, it is being dealt with as a straight appeal because the proceedings arise from the summary dismissal of the appeal by the General Division. Where the General Division dismisses an appeal summarily subsection 56 (2) of the *Department of Employment and Social Development Act*, (the DESD Act), applies meaning that leave to appeal is not required.<sup>1</sup>

---

<sup>1</sup> 56(1) "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."

## ISSUE

[5] The issues arising on this appeal are:-

1. Is the appeal is statute barred?
2. If the appeal is not statute barred, did the General Division err when it dismissed the appeal summarily?

## THE LAW

[6] Subsection 58(1) of the DESD Act, sets out three grounds of appeal, namely, that:-

- 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.

[7] Regarding the substance of the appeal, the applicable law is found under several provisions of the CPP. Subsection 70(3) provides that once a retirement pension begins, the recipient cannot apply for a disability pension under the CPP. Section 66.1 contains the exception to this rule, while subsection 46.2. (1) of the *Canada Pension Plan Regulations* allows a six-month window in which the application to cancel the retirement pension could be made.

[8] The statutory provisions are:-

**70 (3) Effect of receiving a retirement pension** – A person who commences to receive a retirement pension under this Act or under a provincial pension is thereafter ineligible to apply or reapply, at any time, for a disability pension under this Act except as provided in section 66.1 or in a substantially similar provision of a provincial pension plan, as the case may be.

---

(2) Despite subsection (1) no leave is necessary in the case of an appeal brought under subsection 53(3) [summary dismissal by the General Division].

[9] Section 66.1 which provides an exception to the exclusionary nature of section 70(3) and which must be read in conjunction with subsection 46.2 states:-

**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 applicant for a disability benefit under this Act or under a provincial pension plan is in receipt of a retirement pension and the applicant 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] Subsection 46.2. (1) of the Regulations requires a written request made within 6 months of the commencement of the retirement pension:-

**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.

### **Is the Appeal statute barred?**

[11] The question arises from the fact that the DESD Act sets out clear time limits within which an Appellant may bring an application for leave to appeal a decision of the General Division made either by the Employment Insurance Section or the Income Security Section. Summary Dismissal is not mentioned. Thus, there appears to be a lacuna in the legislation with regard to the time limit for bringing appeals from summary dismissal decisions.

[12] The Appeal Division considered whether the time limit provisions should be applied, *ejusdem generis*, (as being of the same nature) to summary dismissal appeals. After careful consideration of the legislation, the Appeal Division determined that it was not necessary to do so. Clearly, the intent of Parliament was to address applications for leave, whether through inadvertence it did not address time limits for appeals from summary dismissals.

[13] In response to the Appeal Division, the Appellant responded by filing new medical documents. At the Appeal stage the Appeal Division does not normally consider new evidence: Tracey v. Canada (Attorney General) 2015 FC 1300. These circumstances do not fall within any of the exceptions that would permit consideration of such evidence. Accordingly, the

Appeal Division did not consider the new documents. The Respondent acknowledged that the legislation does not apply to summary dismissals. (AD1 E) Thus, despite the potential for absurd consequences, notably long delays before bringing an appeal, the Appeal Division is not clear that it could impose these time limits on ~~such appeals~~ an appeal from a summary dismissal decision.

### **Did the General Division err in its application of the law to the facts?**

[14] 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 in paragraphs 5 through 11 of its decision. It identified subsection 66.1(1.1) as speaking to a cancellation of a retirement pension in favour of a disability pension. As well, the General Division correctly identified subsection 46.2. (1) of the Regulation as allowing a recipient of a CPP benefit to ask the Minister to cancel the benefit, provided the request is made within 6 months of the start of the former benefit.

[15] In its analysis, the General Division found at paragraph 19 of its decision that the combined effect of the applicable statutory provisions was that the Appellant's retirement pension could not be cancelled for a disability pension. This conclusion arose because the Appellant made her application more than fifteen months after she began to receive payments of her retirement pension. As a result, at paragraph 22 of its decision the General Division found itself satisfied that the appeal did not have a reasonable chance of success. Taking into consideration the requirements of paragraph 44(1)(b) of the CPP<sup>2</sup> as well as the deeming provision in paragraph 42(2)(b) of the CPP<sup>3</sup>, the Appeal Division agrees with the General Division's conclusion.

---

<sup>2</sup> To be eligible for a disability pension under the CPP, an applicant must meet the four conditions stipulated in paragraph 44(1)(b) of the *CPP*. The conditions are, that the applicant:-

1. be under 65 years of age;
2. not be in receipt of the CPP retirement pension;
3. be disabled; and
4. has made valid contributions to the CPP for not less than the minimum qualifying period, (MQP).

<sup>3</sup> The earliest a person can be deemed to be disabled is fifteen months before the date the disability application is received by the Respondent (paragraph 42(2)(b) of the *CPP*).

(b) a person is deemed to have become or to have ceased to be disabled at the time that is determined in the prescribed manner to be the time when the person became or ceased to be,

[16] The facts of the Appellant's case are straightforward and have been set out above. They are not in dispute. The Appeal Division finds that the General Division committed no error in its application of the law to the facts of the Appellant's case. The General Division found that when all of the statutory provisions set out earlier were applied to the facts of the case, the Appellant's retirement pension could not be cancelled in favour of a disability pension. Thus, her appeal did not have a reasonable chance of success. The Appeal Division concurs.

**Did the General Division err in dismissing the Appeal summarily?**

[17] Section 53 of the DESD Act mandates that the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.<sup>4</sup> At paragraph 4 of its decision, the General Division identified this section as the applicable law. 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 she is entitled to a disability pension the Appeal Division finds, as the General Division found that the interplay between the law and the facts of her case meant that her appeal did not have a reasonable chance of success.

[18] Subsection 46.2. (1) of the *Regulations* mandated that the Appellant had until no later than August 2010 to make the request to cancel her retirement pension. It is not in dispute that she made her request in June 2013. More than six months had passed since she began to receive a retirement pension. In addition, based on the date the Respondent received the application, March 2012 was the earliest the Appellant could be deemed to have become disabled. This date falls after she began to receive a retirement pension months before the time of the making of any application in respect of which the determination is made.

[19] CPP subsection 66.1(1.1) expressly prohibits the making of a request to cancel a retirement pension in favour of a disability pension where the deemed date of disability follows

---

as the case may be, disabled, but in no case shall a person – including a contributor referred to in subparagraph 44(1)(b)(ii) – be deemed to have become disabled earlier than fifteen

<sup>4</sup> 53(1) The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

as opposed to precedes the commencement of payment of a retirement pension. Thus, none of the applicable statutory provisions assist the Appellant. Therefore, there was only one option before the General Division, that is, that it had to invoke and apply section 53(1) of the DESD Act.

[20] 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**

[21] The appeal is dismissed.

Hazelyn Ross  
Member, Appeal Division