



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *X. O. v. Minister of Employment and Social Development*, 2016 SSTADIS 430

Tribunal File Number: AD-16-347

BETWEEN:

X. O.

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: Janet LEW

DATE OF DECISION: November 2, 2016

REASONS AND DECISION

[1] At the General Division, the Appellant succeeded in establishing his entitlement to a disability pension under the *Canada Pension Plan*, RSC 1985, c C-8. On February 5, 2015, the General Division found that the Appellant had a severe and prolonged disability in April 2011, on the basis of a medical opinion that he had attained maximal medical recovery from his injuries at that time. The Appellant sought leave to appeal the decision of the General Division, challenging the date of onset. He maintained that he was disabled 17 months earlier, when he was injured in a workplace accident on November 27, 2009.

[2] On June 16, 2015, the Appeal Division denied the application for leave to appeal. The Appellant sought judicial review of the decision of the Appeal Division. On February 2, 2016, the Federal Court of Canada allowed the Applicant's application for judicial review and ordered that the application for leave to appeal the decision of the General Division be re-determined, in keeping with the reasons of the Court.

[3] On September 1, 2016, I granted leave to appeal, as I was satisfied that the appeal had a reasonable chance of success on the grounds advanced by the Appellant.

[4] With respect to the date of onset, the Respondent is of the view that the Appellant was injured in November 2009 and despite adherence to therapy never improved to the point of being capable regularly of pursuing any substantially gainful occupation. The Respondent, therefore, takes the position that the Appellant's date of onset should be November 2009 as opposed to April 2011.

[5] On October 26, 2016, the parties filed a request that the Appeal Division render a decision in this matter, pursuant to section 18 of the *Social Security Tribunal Regulations*, based on their agreement signed and dated October 24, 2016 by counsel for the Appellant and on October 26, 2016 by counsel for the Respondent.

[6] The agreement reads in part as follows:

- a) Pursuant to subparagraph 44(1)(b)(ii) of the *Canada Pension Plan*, the Appellant became disabled in November 2009;
- b) Pursuant to section 69 of the *Canada Pension Plan*, the Appellant is entitled to a disability pension commencing March 2010.

[7] The appeal is allowed in accordance with the agreement.

Janet Lew
Member, Appeal Division