



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *R. S. v. Minister of Employment and Social Development*, 2017 SSTADIS 218

Tribunal File Number: AD-16-977

BETWEEN:

**R. S.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

---

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

---

Leave to Appeal Decision by: Janet Lew

Date of Decision: May 10, 2017

## **REASONS AND DECISION**

### **OVERVIEW**

[1] This appeal is about whether the Appellant is entitled to a Canada Pension Plan disability pension. The General Division had denied his appeal for a disability pension because it determined that a disability pension was not payable once a person has reached 65 years of age. In the Appellant's case, he had already turned 65 years of age well before he could be deemed disabled under the *Canada Pension Plan*.

[2] The Appellant maintains that he is entitled to a disability pension because the General Division had failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction, and also because it 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. He suggests that the General Division erred in summarily dismissing his appeal without considering the issue of whether he was disabled by the end of his minimum qualifying period on December 31, 1992. He does not otherwise dispute the law or the facts set out by the General Division.

[3] No leave is necessary in the case of an appeal brought under subsection 53(3) of the *Department of Employment and Social Development Act* (DESDA), as there is an appeal as of right when dealing with a summary dismissal from the General Division. As I have determined that no further hearing is required, the appeal before me is proceeding pursuant to paragraph 37(a) of the *Social Security Tribunal Regulations*.

### **ISSUE**

[4] The issue before me is whether the General Division erred in summarily dismissing the Appellant's appeal.

### **ANALYSIS**

[5] The Appellant claims that he became disabled before the end of his minimum qualifying period on December 31, 1992. However, there is a significant difference between

the date of onset of a disability and the deemed date of disability under the *Canada Pension Plan*.

[6] In this case, it was irrelevant that the Appellant allegedly had an early date of onset of disability. As the General Division pointed out, the *Canada Pension Plan* determines how far back an individual can be deemed disabled from the time that he or she makes or files an application for a disability pension. Paragraph 42(2)(b) of the *Canada Pension Plan* reads:

(2) When a person deemed disabled – For the purposes of this Act,

[. . .]

(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, 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 months before the time of the making of any application in respect of which the determination is made.

(My emphasis)

[7] Here, the Appellant applied for a disability pension in May 2015<sup>1</sup>. Accordingly, the earliest that he could be deemed disabled was February 2014. He cannot be deemed disabled earlier than this date, irrespective of an alleged date of onset of disability on or before December 1992. And, because the Appellant had already turned 65 years of age by February 2014, he was ineligible for a disability pension under paragraph 44(1)(b) of the *Canada Pension Plan*. That paragraph states that an appellant is ineligible for a Canada Pension Plan disability pension if he has already reached 65 years of age.

[8] It would have been moot for the General Division to determine whether the Appellant was disabled on or before the end of his minimum qualifying period because he would have nevertheless remained ineligible for a Canada Pension Plan disability pension, given that his application for a disability pension had been made in May 2015, well after he

---

<sup>1</sup> The Appellant had also unsuccessfully applied for a disability pension in February 2002; however his appeals were dismissed by a Canada Pension Plan Review Tribunal on May 29, 2003, and by the Pension Appeals Board on September 29, 2004,

had turned 65 years of age. I agree with the General Division that, given the facts before it, the appeal had no reasonable chance of success and that it was therefore appropriate to summarily dismiss the matter.

**DISPOSITION**

[9] The appeal is dismissed.

Janet Lew  
Member, Appeal Division