



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. B. G.*, 2017 SSTADIS 360

Tribunal File Number: AD-17-192

BETWEEN:

**Minister of Employment and Social Development**

Applicant

and

**B. G.**

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**

**Appeal Division**

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Leave to Appeal Decision by: Margot Ballagh

Date of Decision: July 24, 2017

## **REASONS AND DECISION**

### **DECISION**

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

### **OVERVIEW**

[2] On December 28, 2016, the General Division of the Social Security Tribunal of Canada (Tribunal) determined that a disability pension under the *Canada Pension Plan* (CPP) was payable and that payment of the pension should start as of September 2013. The Applicant filed, within the prescribed time period, an application for leave to appeal with the Tribunal's Appeal Division on March 3, 2017. The Applicant expressly did not contest that the General Division granted the Respondent disability benefits; however, the Applicant argued that the General Division erred in law when it deemed the Respondent disabled more than 15 months before the date that his application for CPP disability benefits was made. The Applicant argued that, as a result of the General Division misapplying the maximum retroactivity permitted under paragraph 42(2)(b) of the CPP, the General Division also erred in applying section 69 of the CPP to determine the effective date of payment of the disability benefit.

### **ISSUE**

[3] I must decide whether the appeal has a reasonable chance of success.

### **THE LAW**

[4] According to subsections 56(1) and 58(3) of the *Department of Employment and Social Development Act* (DESD Act), an appeal to the Appeal Division may be brought only if leave to appeal is granted and the Appeal Division must either grant or refuse leave to appeal.

[5] Subsection 58(2) of the DESD Act provides that leave to appeal is refused if the Appeal Division is satisfied that the appeal has no reasonable chance of success.

[6] The only possible grounds of appeal as set out in subsection 58(1) of the DESD Act are as follows:

- (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] Paragraph 42(2)(b) of the CPP provides that in no case shall a person be deemed to have become disabled earlier than 15 months before the time of the making of any application in respect of which the determination is made.

[8] Section 69 of the CPP provides that, where a 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.

## **SUBMISSIONS**

[9] The Applicant submitted that the General Division erred in law when it failed to properly apply paragraph 42(2)(b) of the CPP and “deemed” the Respondent to have become disabled more than 15 months before the date his application for CPP disability benefits was made.

[10] The Applicant further submitted that, as a result of the General Division’s error in determining the Respondent’s deemed date of disability, the General Division made a second error when it applied section 69 of the CPP and found that payment of the Respondent’s benefits were to begin in September 2013.

## **ANALYSIS**

[11] I can grant leave to appeal only if I am satisfied that the reasons for appeal fall within the specified grounds of appeal as set out in subsection 58(1) of the DESD Act (referred to above) and that the appeal has a reasonable chance of success. Direction in this regard was provided by the Federal Court in *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

**Did the General Division err with respect to the deemed date of disability and/or effective payment date?**

[12] The Applicant received the Respondent's application for CPP disability benefits on December 4, 2014. The General Division determined that the Respondent had a severe and prolonged disability in May 2013, which was the date determined to be the date of actual onset of disability. The Applicant does not dispute this finding.

[13] The General Division then referred to section 69 of the CPP and determined that payments should start as of September 2013, four months after May 2013. It is this start date with which the Applicant takes issue.

[14] Paragraph 42(2)(b) of the CPP provides for a maximum period of retroactivity of 15 months before the time of the making of any application. In this case, there does not appear to be any issue with respect to incapacity to form the intention to apply so as to warrant an exception to the maximum retroactivity as per section 60 of the CPP.

[15] Since the General Division found that the actual date of onset was May 2013 and since this date was more than 15 months before the Applicant received the Respondent's application on December 4, 2014, the General Division may have erred in not applying paragraph 42(2)(b) of the CPP to deem the Respondent to be disabled in September 2013, which is 15 months before the date of application.

[16] As a result, after applying section 69 of the CPP to the proper date of disability, the date of payment would change to January 2014, which would be four months after September 2013.

[17] I am satisfied that the reason for appeal falls within the specified grounds of appeal as set out in subsection 58(1) of the DESD Act, namely that the General Division may have committed an error of law in failing to properly apply paragraph 42(2)(b) and section 69 of the CPP when it determined the date of commencement of payment of the disability benefit.

[18] I am also satisfied that the appeal has a reasonable chance of success based on the above facts and the relevant legislation.

## CONCLUSION

[19] Leave to appeal is granted but only in relation to the application of paragraph 42(2)(b) and section 69 of the CPP.

[20] This decision granting leave to appeal does not presume the result of the appeal on the merits of the case.

[21] In accordance with subsection 58(5) of the DESD Act, the application for leave to appeal hereby becomes the notice of appeal. Within 45 days after the date of this decision, section 42 of the *Social Security Tribunal Regulations* provides that the parties may (a) file submissions with the Appeal Division or (b) file a notice with the Appeal Division stating that they have no submissions to file.

Margot Ballagh  
Vice-chairperson and Member, Appeal Division