



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *Minister of Employment and Social Development v. J. B.*, 2018 SST 13

Tribunal File Number: AD-16-1255

BETWEEN:

**Minister of Employment and Social Development**

Appellant

and

**J. B.**

Respondent

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

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DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: January 5, 2018

## REASONS AND DECISION

### DECISION

[1] The appeal is allowed and the decision that the General Division should have given is made.

### INTRODUCTION

[2] The Respondent completed high school. He worked until 2003 when he was involved in a serious workplace injury. He applied for a Canada Pension Plan disability pension and claimed that he was disabled by an injury to his left arm, post-traumatic stress, arthritis, muscle spasms, side effects from medication and dyslexia. The Appellant refused the application and the Respondent appealed this decision to this Tribunal. The Tribunal's General Division dismissed the appeal. The Respondent appealed this decision to the Tribunal's Appeal Division, which allowed the appeal and returned the matter to the General Division for reconsideration. On August 4, 2016, the General Division allowed the appeal and found that the Respondent became disabled under the *Canada Pension Plan* in 2003. The Appellant requested leave to appeal this decision. On November 2, 2017, the Appeal Division granted leave to appeal, limited to only one ground of appeal, being whether the General Division erred in law by not considering the impact of a division of unadjusted pensionable earnings (DUPE) on the date that a disability pension begins to be paid.

[3] This appeal was decided on the basis of the written record for the following reasons:

- a) Pursuant to paragraph 37(a) of the *Social Security Tribunal Regulations*, I have determined that no further hearing is required.
- b) The *Social Security Tribunal Regulations* require that the Tribunal proceed as informally and as quickly as circumstances, fairness and natural justice permit.
- c) The legal issue to be decided is straightforward.

## ANALYSIS

[4] The Federal Court of Appeal decided that administrative tribunals must look first to their home statutes for guidance in determining their role and what standard of review is to be applied to a decision on appeal (*Canada (Citizenship and Immigration) v. Huruglica*, 2016 FCA 93). The *Department of Employment and Social Development Act* (DESD Act) is the home statute for this Tribunal.

[5] The only grounds of appeal available under the DESD Act are set out in subsection 58(1), namely that the General Division failed to observe a principle of natural justice, made an error of law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. Paragraphs 58(1)(a) and (b) of the DESD Act do not qualify errors of law or breaches of natural justice, which suggests that the Appeal Division should afford no deference to the General Division's interpretations. The word "unreasonable" is not found in paragraph 58(1)(c), which deals with erroneous findings of fact. Instead, the test contains the qualifiers "perverse or capricious" and "without regard for the material before it." As suggested by *Huruglica*, those words must be given their own interpretation. The language suggests that the Appeal Division should intervene when the General Division bases its decision on an error that is clearly egregious or at odds with the record.

[6] In this case, I must decide whether the General Division erred in law with respect to the application of a DUPE under the *Canada Pension Plan* on the date that a disability pension starts to be paid.

[7] The facts are undisputed. The Respondent worked until he was injured in an accident in 2003. He later applied for a DUPE, and the application was granted in October 2011. Without the DUPE application, the Respondent did not have sufficient contributions to the Canada Pension Plan to be eligible to receive a disability pension.

[8] After considering all of the evidence and the law, the General Division found that the Respondent became disabled by the 2003 accident, and would begin to receive disability pension payments in November 2010 based on when he applied for the pension.

[9] However, the General Division did not consider whether the DUPE application had any impact on when a disability pension can begin to be paid. Section 55.1 of the *Canada Pension Plan* provides for the division of pension credits earned during a marriage or common-law relationship. Subsection 55.2(9) states:

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. (emphasis mine)

The *Canada Pension Plan Regulations* set out when a division of pension credits is to take place after an application for this is made.

[10] It is clear that subsection 55.2(9) is relevant to this matter as the Respondent was not eligible to receive a pension without a division of pension credits. It is also clear that the General Division failed to consider this provision, which was an error of law. The appeal must therefore be allowed.

[11] Section 59 of the DESD Act sets out the remedies that the Appeal Division can grant when an appeal is allowed. They include giving the decision that the General Division should have given. I am satisfied that this is the appropriate remedy in this case. The facts are not in dispute. That the Respondent is disabled under the *Canada Pension Plan*, and that he became disabled by the workplace accident is also not in dispute. The only error made by the General Division was not to consider subsection 55.2(9) of the DESD Act.

[12] Therefore, the appeal is allowed and the following decision given:

The Respondent became disabled within the meaning of the *Canada Pension Plan* in November 2003. He required a DUPE under section 55.1 of the *Canada Pension Plan* in order to meet the minimum contributory requirements to qualify for a disability pension. Paragraph 54.2(1)(b) of the *Canada Pension Plan Regulations* and subsection 55.2(9) of the *Canada Pension Plan*

provide that payment of the pension cannot start to be paid earlier than the month after the division takes place. The Respondent's request for a division was received in October 2011; therefore, payment of the disability pension shall start in November 2011.

Valerie Hazlett Parker  
Member, Appeal Division