



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. C. v. Minister of Employment and Social Development*, 2018 SST 163

Tribunal File Number: AD-17-105

BETWEEN:

A. C.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: February 16, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] A. C. (Claimant) was educated in Canada. She worked and contributed to the Canada Pension Plan (CPP) before moving to Portugal. The Claimant last worked in Portugal as a housekeeper for seniors and earned a meagre income. She applied for a CPP disability pension and claimed that she was disabled by heart disease and cervical cancer. The Minister of Employment and Social Development refused the application. The Claimant appealed this decision to the Social Security Tribunal. The Tribunal's General Division dismissed the appeal. The Claimant's appeal to the Tribunal's Appeal Division is dismissed because the General Division made no error under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTER

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

- a) Both parties filed detailed written submissions and their legal arguments were clear;
- b) The Claimant resides in Portugal; and
- c) The *Social Security Tribunal Regulations* require that the Tribunal conduct proceedings as informally and quickly as the circumstances and the considerations of fairness and natural justice permit.¹

¹ Paragraph 3(1)(a) of the *Social Security Tribunal Regulations*

ISSUES

[4] I must decide whether the General Division made an error as follows:

- a) by deciding that the Claimant was not disabled at her minimum qualifying period (MQP);
- b) by deciding that the Claimant had the capacity regularly to pursue any substantially gainful occupation; or
- c) by failing to consider the Claimant's health conditions or that she contributed to the CPP from 1970, not 1972.

ANALYSIS

[5] The DESD Act governs the Tribunal's operation. It provides only three narrow grounds of appeal that the Appeal Division can consider, namely, that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in 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. The Claimant's arguments must be considered in this context.

Issue 1: The General Division found that the Claimant was not disabled at the MQP

[6] The CPP disability program is a contributory plan. A claimant must make sufficient contributions to the plan over a specific period of time to be eligible for the disability pension. Based on the Claimant's contributions, her minimum qualifying period (MQP) (the date by which a claimant must be found to be disabled to be eligible to receive the disability pension) ended on December 31, 1999. The General Division focussed its analysis on the Claimant's condition at that time. The Claimant's oral and written evidence was that she was healthy at that time, and that she became disabled after she had a heart attack in 2008. Any medical conditions that arose after the MQP, no matter how serious, were not relevant to the General Division's decision. The General Division made no error in law or in fact when it decided that the Claimant was not disabled by the MQP. The appeal cannot succeed on this basis.

Issue 2: The General Division considered the Claimant’s capacity regularly to pursue any substantially gainful occupation.

[7] For a claimant to be found disabled under the CPP, they must establish that they have a disability that is both severe and prolonged. A person has a severe disability if he or she is incapable regularly of pursuing any substantially gainful occupation.² It is the Claimant’s capacity for work that is critical to the legal analysis. The Claimant testified before the General Division that she worked for approximately eight years after the MQP. She worked five or six days each week, for at least two to three hours each day, as a housekeeper doing light duties. Based on this, the General Division found that she had the capacity regularly to pursue a substantially gainful occupation.

[8] The decision does not consider in any detail what the term “substantially gainful occupation” means under the CPP. The Federal Court of Appeal teaches that when deciding whether work is substantially gainful, the terms of the employment, including income, work hours, and productivity expectations are to be examined.³ There was almost no evidence before the General Division on these matters, except that the Claimant earned far less than other housekeepers. The General Division was therefore unable to fully consider these factors. It cannot be faulted for not conducting an examination that it could not do. I am satisfied that the General Division’s failure to examine this issue was not an error in law. The evidence was clear that the Claimant was capable regularly of pursuing light work as a housekeeper.

[9] Consequently, I am satisfied that the General Division made no error in this regard.

² Paragraph 42(2)(a) of the CPP

³ *Atkinson v. Canada (Attorney General)*, 2014 FCA 187

Issue 3: The General Division considered all of the Claimant's health conditions and her contributions to the CPP

[10] The Claimant began to have fainting spells in 1996, which occurred on an unpredictable basis. The General Division considered this condition. The decision states that the Claimant testified about this condition and that it did not stop her from her regular work.⁴ It also notes that the Claimant learned to cope with the spells. Clearly, the General Division considered this condition when it made its decision. The decision also refers to the Claimant's heart disease and other conditions, which were diagnosed long after the MQP.

[11] The Claimant also argues that her contributions to the CPP began in 1970. However, a claimant's contributory period begins after they become 18 years of age.⁵ The Claimant turned 18 in 1971, so her contributory period began in 1972. Therefore, the General Division did not base its decision on any erroneous finding of fact regarding the Claimant's contributions to the CPP.

[12] I have reviewed the General Division decision and the written record. I am satisfied that the General Division did not overlook or misconstrue any important evidence. I am also satisfied that it made no error in law and that it observed the principles of natural justice.

CONCLUSION

[13] The appeal is dismissed for the reasons set out above.

Valerie Hazlett Parker
Member, Appeal Division

⁴ Paragraph 22 of the decision

⁵ Paragraph 44(2)(b) of the CPP

METHOD OF PROCEEDING:	On the written record
APPEARANCES:	A. C., Appellant Christian Malciw, Representative for the Respondent