



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. K. v Minister of Employment and Social Development*, 2018 SST 1372

Tribunal File Number: GP-16-3882

BETWEEN:

A. K.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Michael J. Collins

DATE OF DECISION: February 27, 2018

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a *Canada Pension Plan* (CPP) disability benefit. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on August 25, 2017.

[2] This appeal involves the eligibility of the Appellant for the CPP disability benefit after the commencement of his CPP retirement pension. The CPP states that a person who begins receiving a retirement pension is thereafter ineligible to apply for a disability pension, except in cases where the person is found to be disabled before the retirement pension went into pay.

[3] In this case, the Appellant began receiving a CPP retirement pension in April 2015, and continued working full-time. He acknowledged that he was not disabled until March 2016, almost one year after the commencement of his retirement pension.

[4] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[5] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[6] The Appellant began receiving a CPP retirement pension in April 2015. (GD2-26)

[7] Although he had stage 4 kidney disease, he worked full-time with X from August 2015 to March 2016. (GD3-1)

[8] His kidneys failed and he began dialysis treatment in March 2016. (GD3-1 and GD14-1)

[9] The Appellant admitted that he was not disabled or unable to work until March 2016, almost one year after he began receiving his CPP retirement pension. (GD1-1)

[10] He submitted an application for the CPP disability benefit on March 23, 2016. (GD2-4)

SUBMISSIONS

[11] On January 16, 2018, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and he was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Tribunal Regulations). On January 19, 2018, he filed a letter from Eastern Health dated November 25, 2014, that reported a diagnosis of chronic kidney disease and several episodes of acute deterioration of his kidney function. (GD14-1) In addition, he submitted that, had he known that he would be unable to obtain gainful employment after commencing dialysis, he would not have applied for an early retirement pension and thereby jeopardized his eligibility for the disability benefit. He described his current financial situation as “very bleak”. (GD14-1)

[12] The Respondent filed no submissions in response to the Notice of Intention to Summarily Dismiss, but had earlier filed submissions on November 28, 2017, requesting that the appeal be dismissed on the merits, that is, on the grounds that the Appellant was not disabled within the meaning of the CPP on, or prior to March 31, 2015.

ANALYSIS

[13] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions of the CPP as they are set out and it cannot bend the requirements of the CPP. (*Miter v. Canada (Attorney General)*, 2017 FC 262 at par.35)

[14] Pursuant to section 70(3) of the CPP, a person who commences receiving a CPP retirement pension is thereafter ineligible to apply for a disability pension - except, as pursuant to sections 66.1 and 66 (1.1), where that person is deemed to have become disabled not later than the month prior to which the retirement pension first became payable.

[15] In this case the Appellant began receiving a CPP retirement pension in April 2015, such that the latest date by which he could be deemed disabled is March 31, 2015.

[16] But the Appellant admits that he worked full-time after March 2015 and that not until he went into dialysis treatment in March 2016 was he unable to maintain gainful employment.

[17] Although he has filed documentation that indicates he was diagnosed with chronic kidney disease by not later than November 2014, the date of diagnosis is not relevant; rather, the relevant consideration is whether the Appellant was disabled prior to the start of his CPP retirement pension, that is, by not later than March 31, 2015. Again, he has acknowledged that he did not stop full-time work by reason of his medical condition until March 2016.

[18] Also, the Appellant submits that, had he known that he was jeopardizing his eligibility for the CPP disability benefit, he would not have applied for an early retirement pension. This is an understandable position for the Appellant to take; however, the Respondent has no obligation to inform the Appellant about his eligibility for the CPP disability benefit. Rather, it is the responsibility of the Appellant to make the necessary inquiries. (*Lee v. Canada*, 2011 FC 689 at par.97)

[19] The Appellant described his financial situation as “very bleak”, and this after having worked hard for many years, including while suffering from chronic kidney disease. In these circumstances, he submits, his appeal should be granted on humanitarian grounds. The Tribunal acknowledges that the situation in which the Appellant finds himself is indeed very difficult, both in terms of his health and his finances; however, the Tribunal has no jurisdiction to make an award of the CPP disability benefit based on compassionate or humanitarian grounds. (*B.K. v. Minister of Employment and Social Development*, 2016 SSTADIS 384)

[20] Accordingly, the Tribunal finds that the Appellant is ineligible to apply for the CPP disability benefit and that the appeal has no reasonable chance of success.

CONCLUSION

[21] The appeal is summarily dismissed.

Michael J. Collins
Member, General Division - Income Security