



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *A. C. v. Minister of Employment and Social Development*, 2018 SST 228

Tribunal File Number: AD-17-341

BETWEEN:

**A. C.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Jude Samson

DATE OF DECISION: March 9, 2018

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed.

### OVERVIEW

[2] In May 2006, the Respondent, the Minister of Employment and Social Development (Minister), awarded a disability pension under the *Canada Pension Plan* (CPP) to A. C. (the Appellant). At the time, the Appellant had a shoulder injury, along with anxiety and depression. In August 2011, however, the Appellant returned to work and, in March 2013, he voluntarily contacted the Minister's office to say that he had earned over \$8,000 in the previous calendar year. Unfortunately, the Appellant stopped working again a week later, when the bus he was operating came to a sudden stop, aggravating his old injuries.

[3] In November 2013, the Minister nevertheless decided that the Appellant's disability pension should be stopped because he no longer met the relevant criteria under the CPP. The Appellant asked the Minister to reconsider its decision, but that request was denied, and his appeal from that decision to the Tribunal's General Division was dismissed. The Appellant asked the Appeal Division for leave (permission) to appeal the General Division's decision, but that request was filed late. In January 2018, I granted the Appellant both an extension of time to request leave to appeal and leave to appeal.

### ISSUE

[4] The Minister accepts that it had the obligation to prove to the General Division that the Appellant's entitlement to a CPP disability pension ended in November 2013 (AD2). The one issue on which I granted leave was whether the General Division committed an error of law by shifting this burden of proof from the Minister to the Appellant.

[5] In its submissions following my earlier decision, the Minister conceded that the General Division had committed an error of law under paragraph 58(1)(b) of the *Department of Employment and Social Development Act* (DESD Act) (AD2). In addition, it submitted that the most appropriate and expeditious way of dealing with the problem was to send the matter back to

the General Division for reconsideration. Since my earlier decision, the Appellant has filed one additional document, but no additional submissions (AD3).

## **ANALYSIS**

[6] In the circumstances of this case, I am satisfied that the General Division inappropriately shifted the burden of proof from the Minister to the Appellant. Specifically, there are two paragraphs in which the General Division criticized the Appellant for not demonstrating that he had made efforts at obtaining alternative employment.<sup>1</sup> By suggesting that the Appellant needed to prove this fact, the General Division shifted the burden of proof to the Appellant, thereby committing an error of law that justifies my intervention.

[7] With respect to the remedies available to me under subsection 59(1) of the DESD Act, I agree with the Minister's submissions: the matter should be sent back to the General Division for reconsideration.

[8] To be clear, I am not finding that the Appellant's disability pension should be reinstated. The General Division might come to the same conclusion a second time, but it must do so in a way that respects important legal principles. In this case, the relevant legal principle relates to the burden of proof, and means that it is the Minister who has the obligation to show that the Appellant is no longer entitled to a disability pension (and not the Appellant who must show his continuing entitlement to that pension).

## **CONCLUSION**

[9] The appeal is allowed and the matter is sent back to the General Division for reconsideration.

Jude Samson  
Member, Appeal Division

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<sup>11</sup> General Division decision, at paragraphs 60 and 63.

METHOD OF PROCEEDING:	On the record
APPEARANCES:	A. C., self-represented Christian Malciw, Representative for the Respondent