



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. B. v. Minister of Employment and Social Development*, 2018 SST 536

Tribunal File Number: AD-17-935

BETWEEN:

A. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Jude Samson

DATE OF DECISION: May 15, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] The Appellant, A. B., started to receive his retirement pension under the *Canada Pension Plan* (CPP) in May 2014. Despite a long history of knee and back pain, he nevertheless continued working until October 2015, when his pain became too severe. As a result, he applied for a CPP disability pension in February 2016, with the support of his family physician, Dr. Melanson.

[3] The Respondent, the Minister of Employment and Social Development (Minister), denied the Appellant's application for a disability benefit without truly considering his state of health. Rather, the Minister concluded that the Appellant did not meet the statutory requirements for cancelling a retirement pension in favour of a disability pension. The Minister's initial decision was upheld on reconsideration, and the Social Security Tribunal's General Division summarily dismissed an appeal from the Minister's decision.

[4] The Appellant has launched a further appeal to the Tribunal's Appeal Division, but for the reasons below, I have concluded that the appeal must be dismissed.

ISSUE

[5] Did the General Division fail to observe a principle of natural justice or otherwise act beyond or refuse to exercise its jurisdiction?

ANALYSIS

[6] In order to succeed on appeal, the Appellant must show that the General Division committed one or more of the three reviewable errors (or grounds of appeal) set out in s. 58(1) of the *Department of Employment and Social Development Act*. Generally speaking, these reviewable errors concern whether the General Division

- a) breached a principle of natural justice or made an error relating to its jurisdiction;
- b) rendered a decision that contains an error of law; or
- c) 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] In this case, the Appellant alleges that the General Division breached a principle of natural justice or committed a jurisdictional error, though it is not clear what that error might be. Rather, the Appellant¹

- a) reasserts the seriousness and long-standing nature of his pain;
- b) expresses frustration at the long waiting lists for attending a pain clinic; and
- c) describes his poor financial state.

[8] Unfortunately, however, these are not factors that the General Division was required to take into account.

[9] A person is not entitled to receive a CPP retirement pension and a CPP disability pension at the same time.² And, as the General Division explained, various provisions of the CPP make it very difficult to convert a retirement pension into a disability pension when the person's application for a disability pension is made fifteen months or more after the start of the retirement pension.³

[10] The Appellant clearly finds himself in this difficult situation: he has been receiving his CPP retirement pension since May 2014 and submitted his application for a CPP disability pension more than 15 months later (i.e. in February 2016).

[11] The only possible way in which the Appellant could have avoided this unfortunate result is if he had shown that he had been prevented from applying for his disability pension at an earlier date due to a period of incapacity. The General Division alerted the Appellant to this

¹ AD1-2 to 3.

² CPP, at ss. 44(1)(b) and 70(3).

³ CPP, at ss. 42(2)(b) and 66.1(1.1).

possibility in its letter notifying him that it intended to summarily dismiss his appeal, but there is not even a hint of evidence in the file to suggest that the Appellant was incapacitated during the relevant time.⁴

[12] In the circumstances of this case, I am unable to see how the General Division might have breached a principle of natural justice or committed an error relating to its jurisdiction. Indeed, I have reviewed the entire file and could not identify how any of the other possible grounds of appeal could apply either.

CONCLUSION

[13] While the Appellant’s impairments are undoubtedly real, and this result may be difficult for him to accept, the Tribunal is created by legislation and only has the powers that are given to it by its governing statutes. As a result, I am unable to assist the Appellant in this case. Regardless of the compassion that I have for him, the CPP simply does not allow me to make exceptions on the basis of financial hardship or the long-standing nature of his ailments.

[14] The appeal is dismissed.

Jude Samson
Member, Appeal Division

METHOD OF PROCEEDING:	On the record
REPRESENTATIVE:	A. B., self-represented

⁴ GD0.