



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v D. E.*, 2018 SST 1305

Tribunal File Number: AD-18-520

BETWEEN:

Minister of Employment and Social Development

Appellant

and

D. E.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: December 27, 2018

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] D. E. (Claimant) worked and made contributions to the Canada Pension Plan for many years. He has anxiety and depression, and he worked with these conditions for some time while his employer made accommodations for him. In 2016, the Claimant lost vision in one eye. He stopped working. The Claimant applied for and began to receive a Canada Pension Plan retirement pension in March 2016 when he turned 60.

[3] The Claimant later applied for a Canada Pension Plan disability pension. In May 2017, the Minister of Employment and Social Development (Minister), received a medical report from the Claimant's doctor. The Minister wrote to the Claimant in June 2017 and asked that the Claimant provide a disability pension application within 30 days. The Claimant filed a completed disability pension application form on June 29, 2017.¹

[4] The Minister then refused the application because it was received more than 15 months after the Claimant began to receive the retirement pension. The Canada Pension Plan (CPP)² states that a disability pension can replace a retirement pension if a claimant is found to be disabled prior to when they begin to receive the retirement pension. It also states that a person cannot be deemed to be disabled more than 15 months before they applied for a disability pension³. Therefore, as currently written, the CPP does not allow for a retirement pension to be replaced with a disability pension if a claimant applied for the disability pension more than 15 months after they started to receive the retirement pension.

[5] The Claimant appealed this decision to the Tribunal. The Tribunal's General Division allowed the appeal, decided that the medical report should be considered an application for disability benefits, and found that the Claimant had a severe and prolonged disability before he

¹ GD2-16.

² CPP s. 66.1

³ CPP s. 42(2)(b)

began to receive the retirement pension. The appeal is dismissed because the General Division made no error in law when it considered the medical report to be an application for a disability pension.

ISSUE

[6] Did the General Division make an error in law when it decided that the Claimant's medical report was an application for the disability pension?

ANALYSIS

[7] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It provides only three grounds of appeal that the Appeal Division can consider. They are 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.⁴ The Minister's argument that the General Division erred in law is considered below.

[8] The CPP states that no benefit is payable to any person unless an application for it has been made.⁵ It is to be made in the prescribed manner.⁶ Specifically, an application must be made in writing.⁷ The *Canada Pension Plan Regulations* (Regulations) states that an applicant must also provide, in the application or thereafter in writing when requested, applicable information including:⁸

- a) the name at birth and present name, sex, address, and Social Insurance Number of the applicant;
- b) the date and place of birth of the applicant;

⁴ DESD Act, s 58(1).

⁵ CPP, s 60(1).

⁶ *Ibid.*, s 60(6).

⁷ *Canada Pension Plan Regulations* (Regulations), s 43.

⁸ Regulations, ss 52(1) and 68(1).

- c) a statement evidencing the amount of the contributory salary and wages and of the contributory self-employed earnings of a disabled contributor for the year in which the contributor became disabled and for any preceding year;
- d) whether the applicant is or was in receipt of or has applied for a benefit under the CPP or under a provincial pension plan or a pension under the *Old Age Security Act*;
- e) a report of any physical or mental disability including
 - (i) the nature, extent and prognosis of the impairment,
 - (ii) the findings upon which the diagnosis and prognosis were made,
 - (iii) any limitation resulting from the impairment, and
 - (iv) any other pertinent information, including recommendations for further diagnostic work or treatment, that may be relevant;
- f) a statement of that person's occupation and earnings for the period commencing on the date upon which the applicant alleges that the disability commenced; and
- g) a statement of education, employment experience and, activities of daily life.

[9] The Minister received the Claimant's medical report within 15 months of the Claimant beginning to receive a retirement pension. This report contained some of the information required under the CPP and the Regulations. In June 2017, the Minister wrote to the Claimant requesting further information within 30 days and included an application form for the Claimant to complete, which would ensure that he provided all of the required information. The Claimant responded immediately and sent a completed application form by return mail. The Minister's request for information and the complete application was made 16 months after the Claimant began to receive the retirement pension.

[10] The General Division found that the doctor had submitted the medical report on the Claimant's behalf and that it contained much of the information required.⁹ It also decided that:

With the information filed on the Claimant's behalf the Minister could determine his identity; the nature of his health conditions; treatment and prognosis and when he was no longer able to work. The Minister had enough information to assess the Claimant's intention and request additional information. The Claimant followed the process that is allowed under the CPP and Regulations. His physician submitted medical reports on his behalf and he responded promptly when asked for more information. Further, if I apply rules as the Minister suggests it would create a considerable injustice since the 15 month limitation period would mean the Claimant's application would not be considered at all.

I find there is no requirement in section 60 of the CPP or the Regulations for the Claimant to make his own application or sign a document to initiate the process [...].¹⁰

[11] First, the General Division considered that there is no requirement that an application be signed to initiate the process to apply for a disability pension.¹¹ It correctly stated that the Regulations set out detailed and specific requirements but do not require a signature on an application. So the fact that the medical report does not determine whether an application had been properly made.

[12] Second, the General Division acknowledged that the medical report does not contain information about the Claimant's education, occupation, or income. It concluded correctly that the CPP and the Regulations do not require that all of the information be provided before an application can be considered.¹² Section 52 of the Regulations states that required information must be provided **in the application or thereafter in writing when requested**. The Claimant provided the missing information immediately upon being requested to do so. The information was stamped as having been received by the Minister approximately ten days after the Minister requested it.

[13] In addition, when the Minister requested additional information, it asked that he provide it within 30 days. It is reasonable for the Claimant to proceed on the basis that if the requested

⁹ General Division decision at para 16.

¹⁰ General Division decision at paras 18 and 19.

¹¹ *Ibid.* at para 17.

¹² *Ibid.* at para 16.

information was provided as requested, his application for a disability pension would be considered on its merits, and not refused due to the passage of time.

[14] Finally, the Minister relies on a decision of the Pension Appeals Board¹³ and the Appeal Division,¹⁴ which both decided that a medical report was insufficient to be considered an application for a disability pension because it did not contain some of the information required by the Regulations. These decisions are not binding upon me, but they can be persuasive.

[15] These decisions are distinguished from the appeal before me on their facts. In both of the decisions that the Minister relies on, the Minister sent at least two letters to the claimants reminding them to file an application for the disability pension, and the claimant did not do so for some months. In this appeal, the Claimant provided all of the information immediately after it was requested.

[16] Also, in the decisions the Minister relies on, there was no indication that the claimants' time to apply was at an end, whereas, in this case, the time for the Claimant to apply was almost over, and the Minister gave him no indication that his application was at risk of being made out of time. In fact, the Minister's request for further information was made after the time to apply had expired. Therefore, these decisions are not persuasive in this case.

[17] The General Division did not make an error in law. It considered the CPP and the Regulations. It examined the evidence before it. It applied the law to the facts. It rendered a decision that is logical, transparent, and understandable. There is no reason for the Appeal Division to intervene.

¹³ *Minister of Social Development v Somani*, CP23329.

¹⁴ *Minister of Employment and Social Development v S. J.*, AD-17-879.

CONCLUSION

[18] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	December 19, 2018
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	D. E., Respondent Viola Hebert, Representative for the Appellant