



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. S. v Minister of Employment and Social Development*, 2019 SST 1264

Tribunal File Number: GP-18-537

BETWEEN:

D. S.

Claimant

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Claimant represented by: G. H.

Teleconference hearing on: September 10, 2019

Date of decision: September 13, 2019

DECISION

[1] The Claimant ceased to be disabled within the meaning of the Canada Pension Plan (CPP) as of June 30, 2009. His CPP disability pension ceased to be payable as of July 2009.

[2] The Tribunal (SST) does not have jurisdiction to review the Minister's decision that the Claimant must repay the CPP disability pension payments he received from July 2009-September 2014.

[3] The SST does not have jurisdiction to review the Minister's decision that the overpayment of CPP disability pension payments received by the Claimant from July 2009-September 2014 was not the result of administrative error in the administration of the CPP.

OVERVIEW

[4] The Minister received the Claimant's application for the disability pension on January 16, 2002¹. The Minister approved the application on June 6, 2002, with date of onset of disability determined to be October 2000, 15 months prior to the date of application².

[5] Following review of the Claimant's eligibility to continue to receive the CPP disability pension, the Minister determined initially³, and upon reconsideration⁴, the Claimant ceased to be disabled as of June 30, 2009. The Minister stopped paying the disability pension to the Claimant effective September 2014. The Minister determined the Claimant received CPP pension payments to which he was not entitled totalling \$74,739.91 during the period July 2009-September 2014. The Minister required the Claimant to repay the overpayment. The Claimant appealed the reconsideration decision to the Tribunal.

¹ GD2 pages 74-77

² GD 2 page 171

³ GD2 pages 40-43

⁴ GD2 pages 7-8

[6] The CPP sets out the eligibility requirements for the CPP disability pension. To qualify for the disability pension, an applicant must be disabled⁵. A disability pension ceases to be payable with the payment for the month in which the beneficiary ceases to be disabled⁶.

PRELIMINARY MATTERS

[7] Before hearing evidence, I requested clarification of the issue(s) from the Claimant and his representative. I referred to the Claimant's reconsideration request dated April 10, 2017⁷, the representative's letter dated June 6, 2017,⁸ and the Reasons for Appeal in the Claimant's Notice of Appeal dated March 1, 2018⁹. Those letters/documents indicate the Claimant does not dispute the Minister's decision that he ceased to be disabled as of June 30, 2009, and is not entitled to the CPP disability payments he received from July 2009-September 2014.

[8] The representative acknowledged the Claimant is not appealing the Minister's decision that he was not entitled to CPP disability pension payments received from July 2009-September 2014. The representative confirmed the Claimant is appealing the Minister's decision that the Claimant must repay the amount received from July 2009-September 2014, alleging the overpayment was due to administrative error by the Minister. I must nevertheless determine if the Claimant ceased to be disabled within the meaning of the CPP before determining if I have jurisdiction to review the Minister's decisions regarding overpayment and administrative error.

ISSUE(S)

[9] Did the Claimant cease to be disabled within the meaning of the CPP as of June 30, 2009?

[10] Does the SST have jurisdiction to review the Minister's decision that the Claimant must repay the disability pension payments he received from July 2009-September 2014?

⁵ Paragraph 44(1)(b) CPP

⁶ Paragraph 70(1)(a) CPP

⁷ GD2 pages 30-32

⁸ GD2 pages 21-22

⁹ GD1 pages 1-6

[11] Does the SST have jurisdiction to review the Minister's decision that overpayment of disability pension payments received by the Claimant from July 2009-September 2014 was not the result of administrative error in the administration of the CPP?

ANALYSIS

[12] The onus is on the Minister to prove on a balance of probabilities the Claimant ceased to be disabled because the eligibility requirements of the CPP for a disability pension were no longer met at the time his CPP disability benefits were terminated¹⁰.

[13] Disability is defined as a physical or mental disability that is severe and prolonged¹¹. A person is considered to have a severe disability if incapable regularly of pursuing any substantially gainful occupation. A disability is prolonged if it is likely to be long continued and of indefinite duration or is likely to result in death. A person must prove on a balance of probabilities their disability meets both parts of the test, which means if the Claimant meets only one part, the Claimant does not qualify for disability benefits.

Severe disability

The Claimant was not incapable regularly of pursuing any substantially gainful occupation as of July 2009.

[14] The measure of whether a disability is "severe" is not whether the person suffers from severe impairments, but whether the disability prevents the person from earning a living¹².

[15] The Claimant has worked as the operations manager for X, a company that installs X, since March 23, 2009. An Earnings Details statement dated August 15, 2019, attached to the

¹⁰ *Atkinson v. Canada (Attorney General)*, 2014 FCA 187

¹¹ Paragraph 42(2)(a) *Canada Pension Plan*

¹² *Klabouch v. Canada (A.G.)*, 2008 FCA 33

Minister's submissions¹³, shows the Claimant's employment earnings for the years 2009-2018 as follows: 2009 earnings \$52,403; 2010 earnings \$63,148; 2011 earnings \$84,326; 2012 earnings \$82,680; 2013 earnings \$82,680; 2014 earnings \$82,860; 2015 earnings \$85,860; 2016 earnings \$84,000; \$95,540; 2017 earnings \$95,540; and 2018 earnings \$97,230. The Claimant's 2019 salary is \$97,230.

[16] The Claimant's duties as operation manager include overseeing the day-to-day operation of the company, including supervision of twenty-four employees. He confirmed the accuracy of statements made by his employer in the Employer Questionnaire dated January 26, 2016¹⁴, including the salary he earned from 2009-2015, inclusive. The Questionnaire confirmed the Claimant has worked for X since March 23, 2009. The Questionnaire noted he works fulltime, and is currently paid \$1,500 a week. The employer reported the following: the Claimant's attendance was good, performance was satisfactory, and he requires no supervision, special equipment, special arrangements, or help from co-workers.

[17] Since May 2014 "substantially gainful" in respect of an occupation, describes an occupation that provides a salary or wages equal to or greater than the maximum annual amount a person could receive as a disability pension¹⁵. The Claimant earnings since 2009 are significantly greater than the maximum annual amount a person could receive as a CPP disability pension since 2014. I find the Claimant's earnings from 2009-2014 substantially gainful.

[18] The Claimant has worked regularly full time as the operations manager of a X since March 2009. He acknowledged he has not been incapable regularly of pursuing any substantially gainful occupation since July 2009. The evidence substantiates the Claimant's disability ceased to be severe as of June 30, 2009. He supervised twenty-four employees, his attendance was good, his work was satisfactory, and he did not require special accommodations, or special equipment, arrangements, or help from co-workers. I find the Claimant's disability was no longer severe as of June 30, 2009.

¹³ GD9 pages 1-12

¹⁴ GD2 pages 131-133

¹⁵ Paragraph 68.1(1) CPP Regulations

[19] I find the Claimant ceased to be disabled as of June 30, 2009, as his disability was not then severe. I find the Claimant no longer met the CPP eligibility requirements for continued entitlement to a CPP disability pension as of June 30, 2009. Accordingly, the Claimant was no longer entitled to receive CPP disability pension payments effective July 2009.

The SST does not have jurisdiction to review the Minister's decision that the Claimant must repay the disability pension payments he received from July 2009-September 2014.

[20] If a person who has been determined to be disabled within the meaning of the CPP returns to work, the person shall so inform the Minister without delay¹⁶. The Claimant acknowledged he never informed Service Canada that he returned to work prior to the Minister suspending his CPP disability pension in October 2014.

[21] A person who has received a benefit payment to which the person is not entitled shall forthwith return the amount of the benefit payment¹⁷.

[22] Where a person has received a benefit payment to which he is not entitled, the Minister may, in certain circumstances remit all or any portion of the amount the person received to which he was not entitled¹⁸. I have no jurisdiction to review decisions of the Minister regarding the remission of an overpayment¹⁹. The remedy available to the Claimant is to apply to the Federal Court for judicial review of the Minister's decision.

[23] Accordingly, I find I have no jurisdiction to review the Minister's decision regarding repayment of the overpayment of CPP disability benefits the Claimant received from July 2009-September 2014. The Minister may remit all or any portion of the overpayment, but I cannot.

¹⁶ Paragraph 70(1) CPP Regulations

¹⁷ Section 66(1) CPP

¹⁸ Section 66(3) CPP

¹⁹ Canada (MHRD) v. Tucker 2003 FCA 278 and Nanka v. Canada (Attorney General) 2018 FC 959

The SST does not have jurisdiction to review the Minister's decision that overpayment of CPP disability pension payments received by the Claimant from July 2009-September 2014 was not the result of administrative error in the administration of the CPP.

[24] The Claimant in his Notice of Appeal claimed the overpayment of disability benefits received during the period July 2009-September 2014 was due to administrative error by the Minister. He noted information used by the Minister in 2014 to terminate the Claimant's benefits was available in 2009, with the result the Minister could have and should have terminated the Claimant's benefits in 2009, instead of waiting to 2014. The Claimant alleged the failure of the Minister to terminate the Claimant's benefits in 2009 was an administrative error, which justifies remission of the overpayment amount.

[25] The Minister reviewed the Claimant's allegation that the overpayment of CPP disability payments he received after he ceased to be disabled was due to the Minister's administrative error in not stopping the Claimant's pension payment prior to October 2014.

[26] The Minister determined April 11, 2019 the overpayment was not due to administrative error, but solely due to the Claimant's failure to advise the Minister he returned to work in March 2009, and has worked since. I have no jurisdiction to investigate allegations of erroneous advice or administrative error²⁰. Court decisions have consistently held the remedy available to a Claimant in such cases is to apply to the Federal Court for judicial review of the Minister's decision. The Minister advised the Claimant of his right to apply to the Federal Court for judicial review if he disagreed with the Minister's decision. He has not done so to date.

CONCLUSION

[27] The Tribunal is created by legislation and, as such, I only have the powers granted to it by its governing statute. I am required to interpret and apply the provisions set out in the CPP. I must follow decisions of the Federal Courts. I cannot consider extenuating circumstances to permit the Claimant to receive and retain the CPP disability pension payments he received after June 31, 2009, when he ceased to be disabled.

²⁰ *Canada (MHRD) v. Tucker*, 2003 FCA 278; *Canada (A.G.) v. Vinet-Proulx*, 2007 FC 99

[28] The appeal is dismissed.

Patrick O'Neil
Member, General Division - Income Security