



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *J. R. v Minister of Employment and Social Development*, 2019 SST 1648

Tribunal File Number: GP-19-1168

BETWEEN:

J. R.

Applicant (Claimant)

and

Minister of Employment and Social Development

Minister

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Raymond Raphael

Date of decision: September 30, 2019

[1] The Claimant has not established new material facts.

OVERVIEW

[2] The Claimant began to receive a *Canada Pension Plan* (CPP) early retirement pension in August 2015. In May 2016, he applied for the CPP disability pension.¹ He last worked as a boilermaker/fitter. He stated that he had been unable to work since October 2015 because of severe hip and knee pain. The Minister denied the application initially and upon reconsideration.

[3] The General Division dismissed the Claimant's appeal to the Social Security Tribunal (Tribunal) on January 27, 2019. The Appeal Division dismissed the Claimant's application for leave to appeal on June 13, 2019.

[4] On July 11, 2019, the Claimant filed this application to amend or rescind the General Division decision. He submitted that his application for the early retirement pension is a new material fact. He stated that when he applied for the early retirement pension, no one told him that to be eligible for CPP disability, he had to be disabled before he started to receive the early retirement pension.

[5] I decided this application based on the documents and submissions filed because an oral hearing was not required and there were no gaps in the information in the file or need for more clarification.

The initial decision

[6] For the purposes of the CPP, a disability is a physical impairment that is severe and prolonged.² A Claimant's disability is severe if it causes him to be incapable regularly of pursuing any substantially gainful occupation. His disability is prolonged if it is likely to be long continued and of indefinite duration.

¹ GD2-4

² Subsection 42(2) of the CPP

[7] The CPP states that a claimant cannot receive both a retirement pension and a disability pension at the same time.³ To replace a retirement pension with a disability pension, the Claimant must have been found to be disabled before he began to receive the retirement pension.

[8] Since he started to receive a retirement pension in August 2015, he could only replace this with a disability pension if he was found to be disabled on or before July 31, 2015.

[9] The General Division accepted that the Claimant could no longer work because of his medical condition. However, it found his inability to work did not occur until October 2015, which was after he last qualified for CPP disability. The Claimant had testified at the hearing that he had been able to continue to do his very physical job on a full-time basis from August 2010 to October 2015. His wife testified that he had been in excellent health before October 2015. The medical evidence was consistent with the oral testimony.

[10] The General Division dismissed the appeal because it found that the Claimant had failed to establish that it was more likely than not that he suffered from a severe disability as of July 31, 2015.

ISSUE

[11] Has the Applicant established new material facts?

ANALYSIS

Test for New Facts

[12] I may amend or rescind a decision made by the General Division if a new material fact is presented that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.⁴

[13] Under this provision, a decision may be reopened if an applicant submits new information that was not readily accessible at the time of hearing. The new information must also

³ Subsection 44(1)(b) of the CP_P

⁴ Section 66(1)(b) of the Department of Employment and Social Development Act

be material – that is, it could reasonably be expected to have affected the outcome of the hearing if the Tribunal had known about it at the time.

[14] Such an application is not an appeal, nor is it an opportunity to reargue the merits of a Claimant’s appeal. Instead, it is a tool designed to allow the Tribunal to reopen one of its decisions if new and relevant evidence comes to light that existed but, for whatever reason, was previously undiscoverable by the exercise of reasonable diligence.⁵

[15] The Claimant submitted that his application for an early retirement pension was a new material fact. However, the Claimant knew about this application at the time of the disability application and it was included in the materials in the hearing file. The Claimant signed the application on July 7, 2016 and stated that he had not stopped working because of disability.⁶ The retirement application was clearly accessible at the time of the initial hearing.

[16] The Claimant submitted that he was not notified at the time of his application for the CPP retirement pension, that he would not qualify for CPP disability if he became disabled. He applied in person and was not advised by Service Canada officials about the “rules” of the CPP. The government failed to inform him about these rules.⁷ The Claimant was aware of this at the time of the initial hearing. In a telephone conversation with Service Canada on August 24, 2016, he had expressed frustration that he had not been told that he would have difficulty receiving CPP disability if he were already in receipt of an early retirement CPP pension.⁸ This evidence was readily accessible at the time of hearing.

[17] It would appear that the Claimant is raising an issue of potential erroneous advice or administrative error by the Minister. I have no jurisdiction to deal with this. Only the Minister and the Federal Court (if the Claimant appeals the Minister’s decision) have this jurisdiction.⁹

[18] I find that the Claimant has not satisfied the discoverability test.

⁵ *R.B. v Minister of Employment and Social Development and V.H.*, 2019 SST 29

⁶ GD6-11 to 15

⁷ RA5

⁸ GD2-65

⁹ *Pincombe v. Canada (AG)* [1995] F.C. J 1320

[19] In view of this, I need not determine whether he has met the materiality test.

CONCLUSION

[20] The Claimant has failed to establish new material facts.

[21] The application is dismissed.

Raymond Raphael
Member, General Division - Income Security