



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *B. B. v Minister of Employment and Social Development*, 2019 SST 1445

Tribunal File Number: AD-19-876

BETWEEN:

**B. B.**

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: Kate Sellar

DATE OF DECISION: December 19, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is allowed. The Claimant is entitled to a disability pension under the *Canada Pension Plan* (CPP).

### OVERVIEW

[2] B. B. (Claimant) has back pain, migraine headaches, depression, anxiety, deep vein thrombosis, irritable bowel syndrome and fibromyalgia. He stopped working in December 2006.

[3] He applied for a disability pension under the CPP on April 13, 2012.<sup>1</sup> The Minister denied his application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed the appeal. The Appeal Division refused to allow the Claimant's request for permission (leave) to appeal the General Division's decision. The Federal Court granted the Claimant's request for judicial review of the Appeal Division's decision denying leave, and returned the case back to the Appeal Division. The Appeal Division allowed leave to appeal, but then ultimately dismissed the appeal again on the main question of whether the Claimant should receive a disability pension.

[4] The Federal Court of Appeal granted the Claimant's request for judicial review of this second Appeal Division decision. The Federal Court of Appeal set aside the Appeal Division's decision.<sup>2</sup> Rather than delay the case any further by returning it to the Appeal Division for reconsideration for a third time, the Federal Court of Appeal assessed the evidence and came to its own conclusion on whether the Claimant should receive a disability pension. The Federal Court of Appeal directed the Appeal Division on the outcome of the appeal: the Claimant proved that he had a severe and prolonged disability within the meaning of the CPP on or before December 31, 2009.<sup>3</sup> The Federal Court of Appeal directed the Appeal Division to make an order granting the April 13, 2012 application for a disability pension.

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<sup>1</sup> GD3-37.

<sup>2</sup> AD5.

<sup>3</sup> December 31, 2009 was the day the Claimant's minimum qualifying period (MQP) ended. The Minister calculates the MQP based on the Claimant's contributions to the Canada Pension Plan. To access a disability pension, the Claimant has to show that he had a severe and prolonged disability on or before the end of his MQP.

## CONCLUSION

[5] The appeal is allowed in accordance with the direction from the Federal Court of Appeal. The Claimant had a severe and prolonged disability within the meaning of the CPP by December 31, 2009. For the purpose of payment, a person cannot be considered (deemed) disabled more than 15 months before the month they applied for the disability pension.<sup>4</sup> The Claimant applied for the disability pension on April 13, 2012, so he is considered (deemed) disabled starting in January 2011.

[6] According to the CPP, disability pension payments start four months after the deemed date of the disability.<sup>5</sup> In this case, that means that the Claimant's disability pension payments begin four months after January 2011, in May 2011.

Kate Sellar  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
REPRESENTATIVES:	Lorne Gershuny, Representative for the Appellant  Marcus Direnberger, Representative for the Respondent

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<sup>4</sup> *Canada Pension Plan*, s 42(2)(b).

<sup>5</sup> *Canada Pension Plan*, s 69.