



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *SZ v Minister of Employment and Social Development*, 2020 SST 855

Tribunal File Number: GP-20-63

BETWEEN:

**S. Z.**

Applicant

and

**Minister of Employment and Social Development**

Minister

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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Decision by: Patrick O'Neil

Claimant represented by: C. Z.

Date of decision: March 2, 2020

## **DECISION**

[1] The Applicant's Application to Rescind or Amend is dismissed.

## **OVERVIEW**

[2] This application involves a request to rescind or amend a decision of the General Division of the Social Security Tribunal (Tribunal). On June 28, 2019, the General Division determined the Applicant was not entitled to a *Canada Pension Plan* (CPP) disability pension as he was not disabled within the meaning of the CPP by his December 31, 2011 MQP. The Applicant filed an application with the General Division to rescind or amend that decision on January 6, 2020<sup>1</sup>.

[3] This application was decided on the basis of the documents and submissions filed, in other words, it was decided on the record. I determined I did not require any additional evidence to make my decision, as all relevant evidence in the file was clear and non-contradictory. I made my decision after my review of all documentation and submissions contained in the file.

## **DOCUMENT(S) SUBMITTED AS NEW FACTS**

[4] The Applicant submitted the following documents in support of his Application to Rescind or Amend: Notices of Reassessment for the taxation years 2013<sup>2</sup>, 2014<sup>3</sup>, and 2015<sup>4</sup>, issued by Canada Revenue Agency on October 12, 2018, July 19, 2018, and September 30, 2019 respectively.

## **ISSUES**

[5] Does the evidence filed by the Applicant in support of his Application to Rescind or Amend establish a new material fact?

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<sup>1</sup> RA1 pages 3-18

<sup>2</sup> RA1 pages 16-18

<sup>3</sup> RA1 pages 11-15

<sup>4</sup> RA1 pages 6-9

[6] If I find that there is a new material fact, I must then decide whether the Applicant's disability was severe and prolonged within the meaning of the CPP when he last qualified for a CPP disability pension.

## **ANALYSIS**

### **Application to Rescind or Amend – Discoverability and Materiality**

[7] The Tribunal may rescind or amend a decision given by it in the case of a decision relating to the CPP, if a new material fact is presented to the Tribunal that could not have been discovered at the time of the hearing with the exercise of reasonable diligence<sup>5</sup>.

[8] The Applicant must prove on a balance of probabilities that the evidence filed in support of his Application to Rescind or Amend establishes a new material fact within the meaning of paragraph 66(1)(b) of the DESD Act.

### **The evidence filed by the Applicant does not establish a new material fact.**

[9] Before paragraph 66(1)(b) of the DESD Act came into force in April 2013, the Federal Court of Appeal (FCA) set out the test for evidence to be admissible as a “new fact” in relation to former subsection 84(2) of the CPP<sup>6</sup>:

- a) It must establish a fact (usually a medical condition in the context of the CPP) that existed at the time of the original hearing but was not discoverable before the original hearing by the exercise of due diligence (the “discoverability test”), and
- b) The evidence must reasonably be expected to affect the results of the prior hearing (the “materiality” test).

[10] To be admissible as a “new fact”, the Applicant must prove on a balance of probabilities that the document(s) submitted as new evidence meets(meet) both the “discoverability” and “materiality” parts of the test.

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<sup>5</sup> Paragraph 66(1)(b) *Department of Employment and Social Development Act* (DESD)

<sup>6</sup> *Canada v. MacRae*, 2008 FCA 82 (the MacRae decision)

[11] The new facts test developed by the FCA in the MacRae decision is reproduced in subsection 66(1)(b) of the DESD Act when it refers to a new material fact discoverable through the exercise of reasonable diligence<sup>7</sup>.

[12] An applicant must provide evidence of what steps were taken to find the new evidence, and why it could not have been produced at the time of the hearing<sup>8</sup>.

[13] The Federal Court has stated that "the new information must not have been previously discoverable with reasonable diligence at the time of the original hearing which implies that the information must have existed at that time"<sup>9</sup>. New information to satisfy the discoverability test must have existed at the time of the original hearing.

[14] The test for materiality is met only if the proposed new facts may reasonably be expected to affect the outcome<sup>10</sup>. The requirement that the fact be material means that it must be relevant to an applicant's ability to work as at the MQP<sup>11</sup>.

[15] The Notice of Reassessment of the Applicant's 2013 tax year was issued by CRA on October 12, 2018, some eight months prior to the June 25, 2019 hearing and June 28, 2019 decision of the Tribunal. That information was sent to the Applicant by CRA on October 19, 2018<sup>12</sup>. He was aware of the outcome of the CRA reassessment at the time of the June 25, 2019 hearing. As his 2013 income was from self-employment, he had been aware of his 2013 earning for several years prior to the June 25, 2019 hearing. Since the Applicant had knowledge of his 2013 income, and CRA's reassessment of his 2013 taxes before the June 25, 2019 hearing, the information was discoverable with the exercise of reasonable diligence, and does not meet the discoverability test for a new fact.

[16] The Notice of Reassessment of the Applicant's 2014 taxation year, issued by CRA on July 19, 2018, showed the Applicant's self-employment earnings in 2014 were \$8200. The

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<sup>7</sup> *S.M. v. MHRD*, 2014 SST AD 214

<sup>8</sup> *Carepa v. Canada (Minister of Social Development)*, 2006 FC 1319

<sup>9</sup> *Vaillancourt v. Ministry of Human Resources*, 2007 FC 663

<sup>10</sup> *Mazzotta v. Canada (Attorney General)*, 2007 FCA 297

<sup>11</sup> *Taker v. Canada (Attorney General)*, 2012 FCA 39

<sup>12</sup> RA2 page 17

Applicant's Contributions Statement as at September 4, 2018<sup>13</sup> confirmed earnings of \$8200 and CPP contributions in 2014. The Tribunal's decision dated June 28, 2019 noted the Applicant had valid earnings in 2014. The information as to the Applicant's self-employment earnings in 2014 was discoverable, was discovered, and was considered by the Tribunal at the initial hearing. Accordingly, I find the Notice of Assessment for the Applicant's 2014 tax year fails to meet the discoverability test for a new material fact.

[17] CRA completed the reassessment of the Claimant's 2015 taxation year on September 30, 2019, some three months after the initial Tribunal hearing on June 25, 2019. The reassessment relates to the Claimant's self-employed earnings in 2015. He would have been aware of his 2015 earnings for several years prior to the initial hearing. Accordingly, the information was discoverable with reasonable diligence at the time of the original Tribunal hearing, and does meet the discoverability test to be admissible as a new fact.

[18] The Minister acknowledges the Notices of Reassessment of the Claimant's 2013 and 2015 tax years meet the materiality part of the test to be admissible as new facts<sup>14</sup>. The Minister submits, and I find, that evidence does not meet the discoverability test, as they were discoverable at the time of the hearing with the exercise of reasonable diligence.

[19] The Tribunal is created by legislation and, as such, I only have the power granted to it by its governing statute. I am required to interpret and apply the provisions set out in the CPP and DESD Act. I must apply Federal Court decisions. I cannot use the principles of equity or consider extenuating circumstances to allow an Application to Amend or Rescind a decision unless permitted by the CPP and DESD Act, and Federal Court decisions.

[20] I find the evidence submitted by the Applicant in support of his Application to Rescind or Amend does not establish a new material fact. Since I have found no material fact, I am unable to amend or rescind the Tribunal decision dated June 28, 2019.

[21] My decision does not preclude the Applicant making a new application for a CPP disability pension. Although I have found the evidence submitted by the Applicant in support of

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<sup>13</sup> GD3 page 20

<sup>14</sup> RA2 pages 1-10 at page 6, paragraph E(I)(d)

his Application to Rescind or Amend does not establish a new material fact within the meaning of the DESD Act, the information does effect his MQP. I encourage the Applicant to make a new application for the CPP disability pension.

**CONCLUSION**

[22] The Application to Rescind or Amend is dismissed.

Patrick O'Neil  
Member, General Division - Income Security