



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MG v Minister of Employment and Social Development*, 2020 SST 895

Tribunal File Number: AD-19-461

BETWEEN:

M. G.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Shirley Netten

Date of Decision: October 15, 2020

DECISION AND REASONS

Decision

[1] The application for leave (permission) to appeal is refused.

Overview

[2] M. G. (Claimant) applied for a Canada Pension Plan (CPP) disability pension in June 2016. Service Canada denied his application in December 2016 and, on reconsideration, in January 2018.¹

[3] On appeal, the Social Security Tribunal's General Division granted the disability pension. In its January 2019 decision, the General Division found that the Claimant had met the test for disability in September 2011. The General Division said that the disability pension was payable from July 2015, which was 11 months prior to the application date.

[4] In response to a request from Employment and Social Development Canada, the General Division issued a corrected decision on April 5, 2019. The new decision did not change the result — the pension remained payable from July 2015 — but it found that the Claimant had met the test for disability in April 2014 rather than September 2011.

[5] The Claimant seeks permission to appeal the April 2019 General Division decision.² I am refusing permission to appeal because the appeal has no reasonable chance of success.

Issue

[6] The issue in this application is the following:

- Has the Claimant raised an arguable ground of appeal upon which his appeal may succeed?

¹ Service Canada was acting on behalf of the Minister of Employment and Social Development Canada.

² The Claimant also asked the General Division to amend the April 2019 decision. My decision in AD-20-670 addresses the Claimant's appeal of the General Division's decision denying this request.

The test for permission to appeal

[7] The Appeal Division is not a forum for parties to reargue the issues decided by the General Division. Rather, the Appeal Division can intervene only if the General Division has made certain types of errors,³ and only after granting permission to appeal.

[8] Under the *Department of Employment and Social Development Act* (DESDA), the Appeal Division must refuse permission to appeal if it is “satisfied that the appeal has no reasonable chance of success.”⁴ A reasonable chance of success means having some arguable ground upon which the proposed appeal may succeed.⁵ The Federal Court has explained it this way:⁶

[T]his appeal is subject to a screening process that requires that a person seeking to appeal [a General Division] decision must satisfy the [Appeal Division] that one of the grounds of appeal is present and leave should be refused if it is satisfied that the appeal has no chance of success on the reasons given.

[9] I must decide if one or more of the grounds of appeal in the DESDA could apply. If so, I must decide whether there is a reasonable chance that the Claimant’s appeal could succeed on that ground.

There is no arguable case that the General Division made an error by not considering whether the Claimant was disabled by December 2003.

[10] In his submissions to the Appeal Division, the Claimant says that the General Division “should at least have considered the MPQ [*sic*] period of December 2003.”⁷

[11] One of the grounds of appeal to the Appeal Division is that the General Division “refused to exercise its jurisdiction.”⁸ This error would apply if the General Division did not decide something it was supposed to decide.

³ These are found at section 58(1) of the DESDA.

⁴ Section 58(2) of the DESDA.

⁵ See, for example, *Osaj v Canada (Attorney General)*, 2016 FC 115.

⁶ In a decision called *Canada (Attorney General) v Thériault*, 2017 FC 405.

⁷ AD29-2. Other than a pro-rated period in 2014, the Claimant last met the contribution requirement in December 2003.

⁸ Section 58(1)(a) of the DESDA.

[12] To Service Canada and to the General Division, the Claimant repeatedly and consistently argued that his date of disability was September 2011.⁹ Nevertheless, near the end of the General Division hearing, the Claimant noted his low income in 2006, 2007, and 2008, and said, “I probably was disabled already in 1999.”

[13] Responding to this, the General Division did consider the question of whether the Claimant met the test for disability before December 2003, after his 1999 motor vehicle accident.¹⁰ The General Division found that the evidence did not support that the Claimant was disabled at that time. As such, I see no arguable case that the General Division made an error of jurisdiction by failing to consider the possibility that the Claimant had become disabled before 2003.

[14] Perhaps the Claimant means that the General Division didn’t properly or adequately consider the possibility that he was disabled by December 2003. Another ground of appeal to the Appeal Division is that the General Division based its decision on an erroneous finding of fact made “without regard for the material before it.”¹¹

[15] In rejecting the possibility that the Claimant was disabled after his 1999 accident, the General Division mentioned the Claimant’s testimony about chronic pain, the absence of medical evidence, and the Claimant’s return to work for several years. The General Division had previously noted the Claimant and his psychologist’s evidence that he could no longer work as of September 2011, due to a major depressive disorder that developed in 2011. The General Division did not specifically mention the Claimant’s income after his 1999 motor vehicle accident.

[16] A tribunal doesn’t have to refer to each and every piece of evidence in its reasons. It is presumed to have considered all the evidence before it.¹² This presumption may be rebutted if the decision failed to mention critical evidence contrary to its finding of fact; I might then infer from

⁹ GD1-4, GD2-23, GD2-75, GD2-111, GD2-119, GD2-145; GD3-3, GD3-4; GD7-4.

¹⁰ Paragraph 9 of the General Division decision.

¹¹ Section 58(1)(c) of the DESDA.

¹² The Federal Court of Appeal explains this in *Simpson v Canada (Attorney General)*, 2012 FCA 82.

the omission that the General Division did not have regard to the material before it.¹³ The more important the evidence, the more likely the silence about that evidence leads to an inference that it was not considered.¹⁴

[17] There is no basis for such an inference here. The Claimant's business income in the 2000s had little probative value in light of the Claimant's statements that he had successfully returned to work after the 1999 accident,¹⁵ the documentation and testimony asserting September 2011 as the date of disability,¹⁶ and the complete absence of medical evidence supporting an earlier date of disability. People claiming the CPP disability pension have to provide some objective medical evidence of their disability.¹⁷ I see no arguable case that the General Division rejected an earlier disability date without regard for the evidence.

[18] Since the Claimant has not raised an arguable ground of appeal about the General Division's consideration of a date of disability before December 2003, I need not consider the chance of success on this ground.¹⁸

There is an arguable case that the General Division made an error of fact by changing the date of disability.

[19] The Claimant also disagrees with the change to his date of disability from September 2011 to April 2014.¹⁹ He says that he would be satisfied with reinstating the September 2011 date of disability.

[20] In its decision, the General Division decision repeatedly points to evidence, from the Claimant and his psychologist, that the Claimant could no longer work as of September 2011.²⁰ Yet, the corrected conclusion says:

¹³ The Federal Court explains this in *Cepeda-Gutierrez v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 8667 (FC) and *Rahal v Canada (Minister of Citizenship and Immigration)*, 2012 FC 319.

¹⁴ *Minister of Employment and Social Development v M. R.*, 2020 SST 64.

¹⁵ GD7.

¹⁶ GD1-4, GD2-23, GD2-75, GD2-111, GD2-119, GD2-145; GD3-3, GD3-4; GD7-4.

¹⁷ See, for example, *Warren v Canada (Attorney General)*, 2008 FCA 377.

¹⁸ Even if the Claimant had raised an arguable ground of appeal about a date of disability before 2003, the appeal would not have had a reasonable chance of success. As explained in my decision in the Claimant's other proceedings (AD-20-670), even if the Claimant had become disabled in 2003 or earlier, this would not change the result that he was entitled to the disability pension effective July 2015.

¹⁹ AD29-2, AD29-3.

²⁰ Paragraphs 7, 8, and 9 of the General Division decision.

The Claimant had a severe and prolonged disability in ~~September 2011~~
April 2014, when he stopped work due to a major depressive disorder.

[21] Because the evidence consistently pointed to September 2011 and not April 2014 as the date of disability, it is arguable that the General Division changed its finding of fact without regard to the evidence. One of the grounds of appeal (an error of fact) could apply.

The Claimant's appeal is bound to fail on this ground of appeal.

[22] Having identified one possible ground of appeal, I must consider whether there is a reasonable chance of success on this ground of appeal. By "success," I refer to the outcome sought by the Claimant: he wants to receive the disability pension retroactive to September 2011.

[23] Unfortunately, the Claimant was not insured for disability under the CPP in 2011.

[24] To receive a CPP disability pension, a claimant must be disabled, under 65, not receiving a retirement pension, and have made certain contributions to the CPP.²¹ The *Canada Pension Plan* explains the contribution requirement for the disability pension, and the contributory period:

44(2) For the purposes of [the disability pension and the associated disabled contributor's child's benefit],

(a) a contributor is deemed to have made base contributions for not less than the minimum qualifying period only if the contributor has made base contributions during the contributor's contributory period on earnings that are not less than the contributor's basic exemption, calculated without regard to subsection 20(2),

(i) **for at least four of the last six calendar years included either wholly or partly in the contributor's contributory period** or, where there are fewer than six calendar years included either wholly or partly in the contributor's contributory period, for at least four years,

(i.1) for at least 25 calendar years included either wholly or partly in the contributor's contributory period, of which at least three are in the last six calendar years included either wholly or partly in the contributor's contributory period, or

²¹ Section 44(1)(b) of the *Canada Pension Plan*.

(ii) for each year after the month of cessation of the contributor's previous disability benefit; and

(b) the contributory period of a contributor shall be the period

(i) commencing January 1, 1966 or when he reaches eighteen years of age, whichever is the later, and

(ii) ending with the month in which he is determined to have become disabled for the purpose of paragraph (1)(b),

[...]

[Emphasis added]

[25] Section 44(2)(a)(i) applies in this case because the Claimant did not make base contributions for 25 years or more.²² To be eligible for a disability pension, he would need to have made base contributions for at least four of the last six years included wholly or partly in his contributory period.

[26] Under section 44(2)(b)(ii), the Claimant's contributory period would end in September 2011 if the date of disability was September 2011. The last six years wholly or partly in the contributory period would be 2006, 2007, 2008, 2009, 2010, and 2011.

[27] The Claimant hoped to extend his qualifying period by submitting his tax returns for 2006, 2007, and 2008. However, his employment income for these years was below the level that would trigger CPP contributions: after deducting his business expenses, the Claimant reported a business loss for each of these three years.²³ As confirmed in a summary of CPP contributions in January 2019, the Claimant had made enough CPP contributions in 2009 and 2010, and not in 2006, 2007, 2008, or 2011.²⁴ In other words, he had only two years of base contributions during this period. The Claimant did not meet the "four of the last six calendar years" contribution requirement for a September 2011 date of disability.

[28] Consequently, a return to the September 2011 date of disability would result in the Claimant losing his disability pension entirely: he would stop receiving his disability pension, and he would have to return the amounts paid to date. Not only would he not succeed in his

²² GD11-3.

²³ Line 135 on GD10-2, GD10-7, GD10-12.

²⁴ GD11-3.

appeal, he would be much worse off than he is now. There is no reasonable chance of success on this ground of appeal.

Conclusion

[29] The Claimant has not raised an arguable ground upon which his appeal of the General Division decision may succeed. His appeal does not have a reasonable chance of success, and so I must refuse his request for permission to appeal.

Shirley Netten
Member, Appeal Division

REPRESENTATIVES:	M. G., self-represented
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