



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *MF v Minister of Employment and Social Development*, 2021 SST 164

Tribunal File Number: AD-21-128

BETWEEN:

M. F.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Valerie Hazlett Parker

Date of Decision: April 28, 2021

DECISION AND REASONS

DECISION

[1] Leave to appeal is refused.

OVERVIEW

[2] M. F. (Claimant) worked in a physically demanding job. In 2013, he injured his elbow at work, causing both physical limitations and mental health illness. The Claimant also has a significant heart condition. In April 2019, he applied for a Canada Pension Plan disability pension and says that he is disabled by these conditions.

[3] The Minister of Employment and Social Development refused the application. The Claimant appealed to the Tribunal. The Tribunal's General Division allowed the appeal. It decided that the Claimant was disabled when he stopped working in 2013. Based on when the Claimant applied for the disability pension, pension payments start as of May 2018.

[4] The Claimant asks for leave (permission) to appeal this decision to the Tribunal's Appeal Division. He disagrees with the date that the pension payments are to start and the amount of the pension payments.

[5] Leave to appeal is refused. The Claimant has not presented a ground of appeal that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

ISSUES

[6] Does the appeal have a reasonable chance of success because the General Division may have made at least one of the following errors:

- a) Payment of the pension should begin in April 2013, not May 2018; or
- b) The amount of the payment is wrong.

ANALYSIS

[7] An appeal to the Tribunal's Appeal Division is not a re-hearing of the original claim. Instead, the Appeal Division can only decide whether the General Division:

- a) failed to provide a fair process;
- b) failed to decide an issue that it should have, or decided an issue that it should not have;
- c) made an error in law; or
- d) based its decision on an important factual error.¹

[8] However, a claimant must first obtain leave (permission) to appeal. The Appeal Division must refuse leave to appeal if the appeal does not have a reasonable chance of success.² Therefore, to be granted leave to appeal the Claimant must present at least one ground of appeal (reason for appealing) that the Appeal Division can consider and on which the appeal has a reasonable chance of success.

Date that payment begins

[9] The first error that the Claimant says the General Division made is the date that the disability pension payments begin. The Claimant was injured in April 2013, and became disabled at that time.

[10] However, he applied for the disability pension in April 2019.³ The *Canada Pension Plan* sets out the rules for the disability pension. It says that in no case can a person be deemed to be disabled more than 15 months before they applied for the pension.⁴ Therefore, for the purposes

¹ This paraphrases the grounds of appeal set out in s. 58(1) of the *Department of Employment and Social Development Act*

² Section 58(2) of the *Department of Employment and Social Development Act*

³ GD2-50

⁴ Section 42(2)(b) of the *Canada Pension Plan*. Section 60 of the *Canada Pension Plan* sets out an exception to this rule for those who are incapable of forming or expressing an intention to apply, but nothing suggests that the this exception applies in this case

of the disability pension the earliest that the Claimant can be disabled is 15 months before April 2019, which is January 2018.

[11] The *Canada Pension Plan* also says that payment of a disability pension begins four months after a claimant becomes disabled.⁵ This is May 2018. This is correctly set out in the General Division decision.⁶

[12] The Tribunal must follow the rules set out in the *Canada Pension Plan*. Therefore, the appeal has no reasonable chance of success on the basis that the General Division made an error about when pension payments begin.

Amount of pension payments

[13] The other error that the Claimant points to is the amount of pension payments that are paid. He argues that the amount he receives in disability pension payments is not enough to live on. However, the appeal does not have a reasonable chance of success on this basis.

[14] The amount of pension payments is based on the contributions a claimant makes to the Canada Pension Plan while they were working. It is not a social welfare benefit.

[15] The Tribunal has no legal authority to change the amount payable. The Tribunal can only decide:

- a) Whether a Canada Pension Plan benefit is payable;
- b) Whether a person is entitled to a division of unadjusted pensionable earnings or its amount;
- c) Whether a person is entitled to an assignment of a retirement pension or its amount;
or
- d) Whether a penalty should be imposed on a claimant.⁷

⁵ Section 69 of the *Canada Pension Plan*

⁶ General Division decision at para. 49

⁷ Section 63(2) of the *Department of Employment and Social Development Act*

[16] The Claimant's argument does not point to any error by the General Division. The Appeal Division cannot give the Claimant the relief he requests.

CONCLUSION

[17] Leave to appeal is therefore refused.

Valerie Hazlett Parker
Member, Appeal Division

REPRESENTATIVE:	M. I., for the Applicant
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