



Citation: *JK v Minister of Employment and Social Development*, 2021 SST 460

Social Security Tribunal of Canada Appeal Division

Decision

Applicant: Minister of Employment and Social Development
Representative: Marcus Dirnberger

Respondent: J. K.
Representative: Chantelle Yang

Decision under appeal: General Division decision dated May 21, 2021
(GP-20-974)

Tribunal member: Neil Nawaz

Decision date: September 2, 2021

File number: AD-21-269

Decision

[1] Leave to appeal is granted, and the appeal is allowed. I am giving the decision that the General Division should have given and finding the Respondent disabled as of May 2018.

Background

[2] The Respondent is a former electrician and retail sales manager who sustained head injuries in a 2010 car accident. He made two unsuccessful attempts to return to employment and hasn't worked since June 2018. The following month, the Respondent applied for a Canada Pension Plan (CPP) disability pension.

[3] The Minister refused the application. The Respondent appealed that refusal to the Social Security Tribunal's General Division.

[4] The General Division held a hearing by teleconference and found that the Respondent had a severe and prolonged disability as of November 2015. Since a claimant cannot be found disabled more than 15 months before the date of application, the General Division deemed the Respondent's date of disability to be April 2017, with a first payment date of August 2017.

[5] The Minister has now requested leave, or permission to appeal, from the Tribunal's Appeal Division. It alleges that the General Division erred in law by deeming the Claimant disabled before he had established CPP coverage.

[6] At the Minister's suggestion, I convened a settlement conference to see if there was common ground on which the parties might reach an agreement.

[7] The parties did reach an agreement, and its terms were read into the record at the end of the settlement conference.¹ The parties have asked me to prepare a decision that reflects that agreement.

¹ Refer to recording of settlement conference on September 1, 2021.

Agreement

[8] The parties agreed that the Appeal Division should allow the appeal because the General Division erred in law by establishing a date of disability onset that was earlier than the end of the Respondent's contributory period. They also agreed that the Appeal Division should give the decision that the General Division should have given and deem the Respondent disabled as of May 2018.

Analysis

[9] For the following reasons, I accept the parties' agreement.

[10] Coverage for the CPP disability pension is established by working and contributing to the CPP. To qualify for the CPP disability pension, a claimant must establish a minimum qualifying period (MQP). Under the *Canada Pension Plan*, an MQP is established when a claimant shows valid contributions in at least four calendar years over any six-year period.² The MQP must also be within the contributory period, which begins when a claimant reaches eighteen years of age and ends the month in which a claimant is determined to have become disabled.³

[11] In this case, the Respondent last had valid CPP contributions in 2015, 2016, 2017, and 2018. That means the Respondent had CPP disability coverage up to December 31, 2020. However, the Respondent could not have been deemed disabled as of April 2017, as the General Division would have it, because doing so would have put an end to his contributory period, thus leaving him short of his third and fourth years of required contributions.

[12] Contributions made after the date of disability onset cannot be considered. It was an error of law for the General Division to determine that disability started at a particular date and then use contributions made after that date to establish the MQP.

² *Canada Pension Plan*, s 44(2)(a)(i) .

³ *Canada Pension Plan*, s 44(2)(b).

Remedy

[13] When the General Division makes an error, the Appeal Division can fix it by one of two ways: (i) it can send the matter back to the General Division for a new hearing or (ii) it can give the decision that the General Division should have given.⁴

[14] The Tribunal is required to proceed as quickly as fairness permits. Since the only issue in this appeal is a matter of law, I am satisfied that I have all the information I need to determine the Respondent's deemed date of disability onset myself.

[15] The earliest date that the Respondent can be deemed disabled is May 2018, the month in which he achieved his fourth year of valid contributions and thus established an MQP. The Respondent's pension therefore starts as of September 2018—four months after the deemed date of disability.⁵

Conclusion

[16] The appeal is allowed in accordance with the agreement. The Respondent is deemed disabled as of May 2018. His pension starts as of September 2018.



Member, Appeal Division

⁴ DESDA, s 59(1).

⁵ *Canada Pension Plan*, s 69.