



Citation: *RB v Minister of Employment and Social Development*, 2021 SST 786

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant:	R. B.
Respondent:	Minister of Employment and Social Development
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Decision under appeal:	General Division decision dated September 27, 2021 (GP-21-855)
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Tribunal member:	Kate Sellar
Decision date:	December 22, 2021
File number:	AD-21-422

Decision

[1] I am refusing leave (permission) to appeal. The appeal will not proceed. These reasons explain why.

Overview

[2] R. B. (Claimant) was a self-employed property manager. He also drove a school bus part-time. In May 2009, the Claimant had a motorcycle accident. He had multiple injuries, including a fractured pelvis. He has had several surgeries. He has chronic pain in his hips, back, legs, and feet. He has not worked since the accident.

[3] The Claimant applied for a Canada Pension Plan (CPP) disability pension in August 2019. The Minister denied his application initially and on reconsideration. The Claimant appealed the Minister's decision to this Tribunal.

[4] The General Division decided that the Claimant was entitled to a disability pension. However, the General Division explained that a claimant cannot be considered disabled more than 15 months before the Minister receives the disability pension application (the 15-month rule). After that, there is a four-month waiting period before the payments start. The General Division decided that payments for the Claimant's pension would start in September 2018.

[5] The Claimant asks for leave to appeal the General Division's decision. He wants his disability pension to start when he had the motorcycle accident in May 2009.

[6] I must decide whether it is arguable that the General Division made an error that would justify granting the Claimant leave to appeal.

[7] It is not arguable that the General Division made an error about when the pension starts.

[8] I am refusing leave to appeal. The appeal will not proceed further.

Issue

[9] The issue in this case is as follows:

- a) Can it be argued that the General Division made an error of fact or of law about the date the Claimant's disability pension starts?

Analysis

– Reviewing General Division Decisions

[10] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, I reviewed the Claimant's arguments and the General Division's decision to decide whether the General Division may have made any errors.

[11] That review is based on the wording of the Act, which sets out the "grounds of appeal." The grounds of appeal are the reasons for the appeal. To grant leave to appeal, I must find that it is arguable that the General Division made at least one of the following errors:

- It acted unfairly.
- It failed to decide an issue that it should have, or decided an issue that it should not have.
- It based its decision on an important error regarding the facts in the file.
- It misinterpreted or misapplied the law.¹

[12] At the leave to appeal stage, a claimant must show that the appeal has a reasonable chance of success.² To do this, a claimant needs to show only that there is some arguable ground on which the appeal might succeed.³

¹ See section 58(1) of the *Department of Employment and Social Development Act* (DESD Act).

² See section 58(2) of the DESD Act.

³ The Federal Court explained this in a case called *Fancy v Canada (Attorney General)*, 2010 FCA 63 (CanLII).

The date the disability pension starts

[13] It is not arguable that the General Division made an error about the date the Claimant's disability pension starts.

[14] The Claimant wants his disability pension to start when he became disabled, which was when he had the accident in 2009. He does not want the pension payments to start in September 2018, which was the date the General Division identified.⁴

[15] The General Division decided that the Claimant met the requirements for a disability pension. He had a severe and prolonged disability when he was injured in the accident in May 2009.⁵

[16] But the CPP says that a disability pension cannot start more than 15 months before the time the Claimant applied.⁶ The Minister received the Claimant's application in August 2019.

[17] According to the 15-month rule, the earliest the Claimant can qualify for the disability pension is 15 months before August 2019, which is May 2018. Payments start four months after the month you qualify.⁷ As a result, the Claimant's payments start four months after May 2018, which is September 2018.

[18] I can understand why the Claimant would like the pension payments to be retroactive to when he was first injured in 2009. That would make a big difference to the amount the Claimant receives in disability pension.

[19] However, there is no debate about when the Claimant applied for the pension, so in my view there is no possible error of fact here about when the pension starts.

[20] The law about when a disability pension starts is clear. The 15-month rule, plus four months from payment means that the Claimant's payments start in September

⁴ See General Division decision, paragraphs 45 to 47. The Claimant stated the General Division made an error of fact in the pension start date at GD1-5.

⁵ See General Division decision, para 45.

⁶ See section 42(2)(b) of the CPP.

⁷ See section 69 of the CPP.

2018. Unfortunately, I see no path in the law that would allow the Claimant to receive the pension any sooner in this case. In my view, there is no possible error of law in the way the General Division calculated the start date for the Claimant's disability pension.

[21] I reviewed the file and I do not see any fact that the General Division might have ignored or misinterpreted that would affect the decision about the date the pension payments start.⁸

Conclusion

[22] I refused permission to appeal. This means that the appeal will not proceed.

Kate Sellar
Member, Appeal Division

⁸ This kind of review is consistent with what the Federal Court discussed in its decision in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.