



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *ZM v Minister of Employment and Social Development*, 2022 SST 854

Tribunal File Number: GP-22-46

BETWEEN:

Z. M.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Virginia Saunders

DATE OF DECISION: March 24, 2022

Decision

[1] The appeal is summarily dismissed. This means there won't be a hearing, and the appeal file is closed.

[2] The Appellant, Z. M., isn't eligible for a Canada Pension Plan (CPP) disability pension or a post-retirement disability benefit.

[3] This decision explains why I am summarily dismissing his appeal.

Overview

[4] The Appellant applied for a CPP disability pension and a post-retirement disability benefit in August 2021.¹

[5] The Minister of Employment and Social Development (Minister) denied the application. The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

What summary dismissal means

[6] The Tribunal has to summarily dismiss an appeal if it considers that the appeal has no reasonable chance of success.² This means the Appellant doesn't have an argument that could possibly succeed, no matter what evidence or arguments he might present at a hearing.³ When the Tribunal summarily dismisses an appeal, there won't be a hearing, and the appeal file is closed.

[7] I sent the Appellant a letter explaining that I planned to summarily dismiss his appeal. I gave him 35 days to tell me in writing why he thinks I shouldn't do that.⁴

¹ See GD2-14. The CPP disability benefit and the post-retirement disability benefit have the same application form. If an applicant is already receiving a CPP retirement pension (as the Appellant was in this case), the Minister considers them to have applied for both benefits.

² See section 53(1) of the *Department of Employment and Social Development Act*, and *Miter v Canada (Attorney General)*, 2017 FC 262.

³ See *The Estate of JB v Minister of Employment and Social Development*, 2018 SST 564 at para 23.

⁴ Section 22(1) of the *Social Security Tribunal Regulations* says that, before summarily dismissing an appeal, the Tribunal has to give an appellant notice in writing and a reasonable amount of time to make submissions. The letter to the Appellant is at GD0-1-3.

[8] The Appellant replied to my letter. He argued that he was injured at work in December 2019 and that he applied for disability before May 2020. He said he provided medical reports in August 2021.⁵

What I have to decide

[9] I have to decide whether the Appellant's appeal has a reasonable chance of success.

Reasons for my decision

[10] The Appellant's appeal has no reasonable chance of success.

[11] First, I want to address something the Minister wrote to the Tribunal about. The Minister was concerned that, although it considered the Appellant's application to be for both a disability pension and a post-retirement disability benefit, the Minister didn't "specifically provide a differentiation" between the two benefits in its decisions. The Minister asked me to consider the initial and reconsideration decisions to apply to both benefits.⁶ The Minister also asked for a pre-hearing conference to discuss this matter.⁷

[12] I decided not to call a pre-hearing conference, because we don't need one. The initial and reconsideration decisions apply to the disability pension and the post-retirement disability benefit. Both decisions talk about a disability benefit or benefits. The CPP law says a "benefit" is a benefit payable under the law, and includes a pension.⁸ So a decision about a "disability benefit" includes both the disability pension and the post-retirement disability benefit.

[13] It doesn't matter if the Appellant applied for a disability pension or a post-retirement disability benefit. He isn't eligible to receive either benefit once he has turned 65.⁹ The Appellant turned 65 in March 2017.

⁵ See GD4-1.

⁶ The initial decision is at page GD2-9. The reconsideration decision is at page GD2-5.

⁷ See GD5.

⁸ See s. 2 of the *Canada Pension Plan*.

⁹ See s. 70(1)(c) and s. 70.02(b) of the *Canada Pension Plan*.

[14] Even if the Appellant became disabled before he turned 65, he can't receive a CPP disability pension or a post-retirement disability benefit for the period before March 2017. This is because he applied in August 2021. The CPP says the earliest a person can be considered disabled is 15 months before they applied.¹⁰ This means the Appellant can't be considered disabled before May 2020. By that time, he was 68 years old.

[15] The Appellant did apply for a CPP disability pension before May 2020. He applied in February 2011.¹¹ But that was a different application. The Minister denied it.¹² The Appellant didn't ask the Minister to reconsider the denial.

[16] The Appellant's February 2011 application isn't part of this appeal. I don't have the power to grant the Appellant a CPP disability benefit based on his 2011 application. The only application I can make a decision about is the one the Minister received in August 2021.

Conclusion

[17] I have to follow the law that is written in the *Canada Pension Plan*. In this case, the law says the Appellant can't be considered disabled before May 2020. Because the Appellant had already turned 65 by then, he can't receive a disability pension or a post-retirement disability benefit.

[18] This means the appeal has no reasonable chance of success.

[19] The appeal is summarily dismissed.

Virginia Saunders
Member, General Division - Income Security

¹⁰ See s. 42(2)(b) of the *Canada Pension Plan*.

¹¹ See GD2-45.

¹² See GD2-37.