



Citation: *Minister of Employment and Social Development v GG*, 2022 SST 856

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Minister of Employment and Social Development
Representative: Jared Porter

Respondent (Claimant): G. G.

Decision under appeal: General Division decision dated April 21, 2022
(GP-21-958)

Tribunal member: Kate Sellar

Type of hearing:

Decision date: August 31, 2022

File number: AD-22-442

Decision

[1] I am allowing the appeal. The General Division made errors of law. I am giving the decision that the General Division should have given. The Claimant is entitled to a disability pension. Her disability was severe and prolonged in November 2021. Payments start four months later in March 2022.

Overview

[2] G. G. (Claimant) worked in an administrative role in an office. She has osteoarthritis of the left hip, osteoporosis, degenerative disc disease, chronic pain, obesity, anxiety, and depression. Her pain became unmanageable as of November 2021, and she took steps to retire as of December 2021. The Claimant started receiving a Canada Pension Plan (CPP) retirement pension as of December 2021.

[3] The Claimant applied for a CPP disability pension in July 2020. The Minister of Employment and Social Development (Minister) refused her application. The Claimant appealed the Minister's decision to this Tribunal.

[4] The General Division decided that the Claimant was eligible for a disability pension and that her disability was severe and prolonged as of July 2020 when she applied for the disability pension. Payments would start four months later as of November 2020.

[5] I granted the Minister permission to appeal the General Division's decision. I found that it was arguable that the General Division made an error of law because it found the Claimant eligible for the CPP disability pension during a time that she was also receiving the CPP retirement pension.

[6] I must decide whether the General Division made that or any other error under the *Department of Employment and Social Development Act* (Act). If the General Division did make an error, I must decide what I will do to fix that error.

[7] I find that the General Division made errors of law. The Claimant's disability started in November 2021, consistent with the agreement the parties reached.

The parties agree on the outcome of the appeal

THE PARTIES AGREE that the General Division erred in law by not applying the “substantially gainful” threshold in the *Canada Pension Plan Regulations* to the [Claimant’s] 2020/2021 employment income. The General Division also erred in law by granting the [Claimant] a disability pension while she was already receiving a retirement pension, which is not allowed.

THE PARTIES AGREE that the [Claimant] had a “severe” and “prolonged” disability that met the requirements to obtain a *Canada Pension Plan* (CPP) disability pension as of November 2021, when the [Claimant] testified that her pain was becoming unmanageable.

THEREFORE, the parties request that the Appeal Division make a decision based on this agreement. The parties ask the Appeal Division to use its powers to “give the decision that the General Division should have given” and issue the following decision based on the errors of law described above:

- (1) The General Division erred in law by failing to apply the “substantially gainful” threshold in the *Canada Pension Plan Regulations* to the [Claimant’s] 2020/2021 income.
- (2) The General Division erred in law by awarding the [Claimant] a disability pension while she was already receiving a retirement pension, which is not possible under the CPP.
- (3) The [Claimant] had a “severe” and “prolonged” disability as of November 2021, when her pain became unmanageable and she took steps to stop working.

THE PARTIES NOTE that if the Appeal Division issues this decision:

- Payments for the [Claimant’s] CPP disability pension commence in March 2022; and
- the Minister can treat the [Claimant’s] application for a CPP disability pension as a request to cancel her application for

a retirement pension, eliminating the issue of the [Claimant] receiving both at once

I accept the proposed outcome

[8] I agree that the General Division made two errors of law.¹

[9] First, the Claimant was not entitled to a disability pension when she was working regularly in a full-time position that wasn't with a benevolent employer, and she was earning far more than she would have if she had been receiving the maximum allowable CPP disability pension. The General Division did not consider some of these factors. Second, the Claimant was not eligible for retroactive CPP disability pension payments in addition to CPP retirement pension payments that she was already receiving once she retired.

[10] To fix these errors, I will give the decision that the General Division should have given². The Claimant had a severe and prolonged disability as of November 2021 when her pain became unmanageable and she stopped working.³ At that point, she was incapable regularly of pursuing any substantially gainful work. Her disability was long continued and her doctors didn't expect her to recover.

[11] Payments start four months later in March 2022.⁴ The Claimant's application for the CPP disability pension is treated as a request to cancel the retirement pension, so the Claimant won't receive both pensions at the same time.

Conclusion

[12] I allow the appeal. I gave the decision consistent with the agreement between the Claimant and the Minister. The Claimant is entitled to a CPP disability pension.

Kate Sellar

Member, Appeal Division

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

² See section 58(2) and 64(1) of the Act.

³ See *Canada Pension Plan*, section 42(2).

⁴ See *Canada Pension Plan*, section 69.