



Citation: *AE v Minister of Employment and Social Development*, 2022 SST 919

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: A. E.
Representative: Chantelle Yang

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

Decision under appeal: General Division decision dated March 15, 2022
(GP-20-1786)

Tribunal member: Neil Nawaz

Type of hearing: On the record
Decision date: September 20, 2022
File number: AD-22-363

Decision

[1] The appeal is allowed. The General Division made an error when it found that the Appellant was not entitled to a Canada Pension Plan (CPP) disability pension. The Appellant's pension will begin as of March 2018.

Overview

[2] The Appellant is a 43-year-old former poultry farmer and graphic designer. In June 2013, she sustained multiple injuries in a motor vehicle collision (MVC), leaving her with chronic back pain, among other conditions.

[3] The Appellant unsuccessfully applied for a Canada Pension Plan (CPP) disability pension in June 2015. She applied again in February 2019 and was refused a second time. Both times, the Minister found that she did not have severe and prolonged disability as of December 31, 2014, the last time she had CPP disability coverage.

[4] The Appellant appealed the Minister's second refusal to the Social Security Tribunal's General Division. The General Division held a hearing by teleconference and dismissed the appeal. It found that, while the Appellant had some limitations, the evidence did not show she was regularly incapable of a substantially gainful occupation.

[5] The Appellant then asked the Appeal Division for permission to appeal. She alleged that the General Division made the following errors:

- It failed to consider her medical conditions in their totality;
- It considered events that occurred after the end of her coverage period;
- It overlooked significant evidence about her ongoing impairments following surgeries on her wrist and neck in 2014; and
- It disregarded evidence indicating that her health conditions prevented her from running a chicken hatchery and working as a graphic designer.

[6] In July, I granted the Appellant permission to appeal because I thought she had an arguable case. I then scheduled a settlement conference to see if there was some basis on which the parties might reach an agreement.

[7] The parties did reach an agreement. They have asked me to prepare a decision that reflects that agreement.

Agreement

[8] At the settlement conference, the Minister's representative conceded that the General Division's decision was based on an erroneous finding that the Appellant's health condition prevented her from completing a graphic design contract. He offered the Appellant a CPP disability pension, effective November 2017, with a first payment date of March 2018.

[9] The Appellant's representative accepted the offer on her client's behalf.

Analysis

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

The General Division disregarded evidence that the Appellant was incapable of graphic design work

[11] In its decision, the General Division concluded that the Appellant's unsuccessful work attempts did not help her case:

The evidence about the Appellant's attempts to do some work is not proof that she has a severe disability. She still has the hatchery but not as a business because she found she could not earn money running it. **There is no evidence to show her health conditions prevented her from completing the design contract** [emphasis added].¹

¹ See General Division decision, paragraph 32.

However, the record contains medical reports indicating that the Appellant's limited sitting and standing tolerance interfered with her ability to perform desk and computer work:

- In May 2017, an occupational therapist noted that the Appellant had “not been successful in returning to graphic design due to her challenges with her right arm going numb with use of the computer mouse and keyboard and reduced sitting and standing tolerance.”² The therapist concluded that she would likely not be able to return to her pre-MVC occupation in graphic design due to long hours required at a computer.
- In August 2017, the Appellant's family doctor wrote that the Appellant had attempted part time work but found that “even using a sit to stand arrangement, she could not work for greater than 40–45 min without developing severe pain in her neck hips and ankles.”³

In addition to these reports, the Appellant testified at length about the problems that she encountered when attempting to work at a computer for extended periods—even with an ergonomically designed home office.⁴

[12] This evidence plainly conflicts with the General Division's conclusions. I am satisfied that the General Division erred when it found “no evidence” that the Appellant's health conditions prevented her from completing a graphic design contract.

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.⁵

² See ICBC Case Management Discharge Report dated May 2, 2017 by Sarah Taylor, occupational therapist, GD2R-264.

³ See letter dated August 15, 2017 by Dr. Lisa Vasil, general practitioner, GD2R-88.

⁴ Refer to recording of hearing, 1:05:10 to 1:09:50.

⁵ See DESDA, section 59(1).

[14] The Tribunal is required to proceed as quickly as fairness permits. The parties agree that the Appellant is disabled, and there is enough information on file to allow me to confirm that assessment for myself.

[15] Having reviewed the entire case file, I am satisfied that the Appellant is incapable regularly of pursuing any substantially occupation. I base this conclusion on the following factors:

- The Appellant stopped working in June 2013 after sustaining injuries, including multiple fractures, in an MVC;
- Despite undergoing several reparative surgeries, the Appellant was left with chronic pain, among other serious medical conditions;
- The Appellant's attempt to work in an alternative occupation was unsuccessful because of her medical conditions;
- The Appellant took a graphic design contract for a neighbour, but her inability to work comfortably at a desk prevented her from completing it on time; and
- The Appellant has complied with all recommended treatment but continues to experience significant functional limitations.

[16] In view of the above, I am satisfied that the Appellant had a severe and prolonged disability as of her MQP. Although she is relatively young and well educated, she is a poor candidate for retraining. Given her profile and limitations, she is effectively unemployable.

[17] I am also satisfied that the Appellant's disability is prolonged. The Appellant has undergone surgery and rehabilitation to limited effect. It is difficult to see how her condition can significantly improve at this late date, even with further physiotherapy or through the use of new pain medications.

Conclusion

[18] The appeal is allowed in accordance with the parties' agreement. I find that the Appellant became disabled as of June 2013, the month of her MVC. Since the Minister

received her application in February 2019, the Appellant is deemed disabled as of November 2017.⁶ The Appellant's disability pension therefore begins as of March 2018.⁷



Member, Appeal Division

⁶ Under section 42(2)(b) of the *Canada Pension Plan*, a person cannot be deemed disabled more than 15 months before the Minister received the application for a disability pension.

⁷ According to section 69 of the *Canada Pension Plan*, payments start four months after the deemed date of disability.