



Citation: *KO v Minister of Employment and Social Development*, 2023 SST 54

Social Security Tribunal of Canada Appeal Division

Decision

Appellant (Claimant): K. O.
Representative: Gavin Cosgrove

Respondent: Minister of Employment and Social Development
Representative: Sandra Doucette

Decision under appeal: General Division decision dated October 31, 2022
(GP-22-278)

Tribunal member: Kate Sellar

Type of hearing: In Writing

Decision date: **January 20, 2023**

File number: AD-22-946

Decision

[1] I'm allowing the appeal. The Claimant is entitled to a disability pension under the *Canada Pension Plan* (CPP). Payments start March 2021.

Background

[2] K. O. (Claimant) was a carpenter. He stopped working after he had a motorcycle accident in May 2018. He had soft issue damage and five surgeries on his wrist. He had a concussion. He has adjustment disorder with mixed anxiety and depressed mood.

[3] The Claimant applied for a CPP disability pension. The Minister refused his application initially and on reconsideration. The Claimant appealed to this Tribunal. The General Division decided that the Claimant was not eligible for a disability pension.

[4] The Appeal Division granted the Claimant permission to appeal the General Division's decision. The parties agreed the General Division made an error, and the Appeal Division returned the matter to the General Division for reconsideration.

[5] A different member of the General Division decided that the Claimant wasn't eligible for the disability pension. The Claimant appealed to the Appeal Division again.

[6] I granted the Claimant permission to appeal to the Appeal Division. I held a settlement conference to try to resolve the appeal.

The parties agree on the outcome of the appeal

[7] The parties have asked for a decision based on an agreement they reached at the settlement conference on January 19, 2023.

[8] This is the agreement the parties reached:

- The parties agree that the General Division made an error of fact contrary to section 58.1(b) of the *Department of Employment and Social Development Act* (the Act). The General Division made an error in paragraph 47 of the decision:

All of the medical reports dated prior to December 31, 2020 support that, although the Claimant has functional limitations that would prevent him from returning to carpentry work or to any work involving the use of his left upper extremity, he remained capable of attempting alternative work within his limitations or retraining for alternative work.

- The parties agree that the Appeal Division should allow the appeal.
- The parties agree that the Appeal Division should give the decision that the General Division should have given according to section 59(1) of the Act.
- The Appeal Division should decide that the Claimant is entitled to a CPP disability pension effective November 2020, when his medical evidence first showed that he had a severe and prolonged disability within the meaning of section 42(2) of the CPP.
- Consistent with section 69 of the CPP, payments start four months after November 2020, which is March 2021.

I accept the parties' agreement

[9] I accept the parties' agreement. In my view, there is evidence dated before December 31, 2020 to suggest that the Claimant was not capable of attempting alternative work within his limitations or retraining for alternative work.¹

[10] Although the Claimant applied earlier in 2018, I am satisfied that it was not until November 2020 that his disability was both severe and prolonged within the meaning of the CPP. The Claimant proved he was disabled a month before the end of his minimum qualifying period (MQP). Payments start four months later in March 2021.

¹ See ADN1-9.

Conclusion

[11] I allowed the appeal. The Claimant is entitled to a disability pension under the *Canada Pension Plan*. Payments start March 2021.

Kate Sellar

Member, Appeal Division