



Citation: *Minister of Employment and Social Development v RR*, 2023 SST 269

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: Minister of Employment and Social Development
Representative: Rebekah Ferriss

Respondent: R. R.
Representative: R. K.

Decision under appeal: General Division decision dated August 30, 2022
(GP-21-1156)

Tribunal member: Neil Nawaz

Decision date: February 22, 2023

File number: AD-22-886

Decision

[1] The appeal is allowed. The General Division made an error when it found that the Respondent, R. R., became disabled in 2005. I have decided to give the decision that the General Division should have given and find the Respondent disabled as of October 2016. However, the start date of her Canada Pension Plan (CPP) disability pension remains June 2018.

Overview

[2] The Respondent is a 57-year-old former factory worker who has lived in Canada since 1994. She left her job in 2005 because of knee and back pain. In 2013, she returned to work, taking successive jobs as a seasonal order picker. She stopped working for good in 2016 after developing carpal tunnel syndrome.

[3] The Respondent applied for a Canada Pension Plan (CPP) disability pension in May 2019. The Minister refused the application because, in her view, the Respondent had not shown that the Respondent had a severe and prolonged disability during her minimum qualifying period (MQP), which ended on December 31, 2007.¹ The Minister also found no evidence of any disability that had started during the Respondent's "prorated" period, which ran from January 1, 2016 to October 31, 2016.²

[4] The Respondent appealed the Minister's decision to the Social Security Tribunal's General Division. The General Division held a hearing by videoconference and allowed the appeal. It found that the Respondent had a severe and prolonged disability from 2005 onward. It accepted that she could not work in the real world because, on top of her various medical conditions, she had limited education, skills, and English language proficiency. It concluded that, although the Respondent recorded

¹ The MQP is the period in which a claimant last had coverage for Canada Pension Plan (CPP) disability benefits. Coverage is established by working and contributing to the CPP.

² Section 44(2.1) of the *Canada Pension Plan* exempts claimants from the full contribution requirement if they can show that they became disabled at some point during what would have been the final year of their contribution period.

substantially gainful earnings in 2013, 2014, and 2015, she was nonetheless incapable of regular work during those years.

[5] The Minister requested permission to appeal the General Division's decision. She alleged that the General Division made legal and factual errors when it decided that the Respondent had a severe and prolonged disability in 2005.

[6] In December 2022, I granted the Minister permission to appeal because I thought she had raised an arguable case.

[7] The parties have now reached an agreement.³ They have asked me to prepare a decision that reflects that agreement.

Agreement

[8] The parties' agreement reads as follows:

The parties agree that the Appeal Division should allow this appeal because the General Division erred in fact and law in making its decision within the meaning of the CPP and paragraphs 58(1)(b) and (c) of the former provisions of the *Department of Employment and Social Development Act* (DESDA).

The General Division erred in law when it did not apply section 68.1 of the *Canada Pension Plan Regulations* and disregarded the Respondent's earnings above substantially gainful from 2013, 2014, and 2015, to find her disabled as of 2005. The General Division also erred in fact on this point as it concluded that the Respondent was disabled as of 2005, despite the record showing she had substantially gainful earnings from 2013-2015.

Therefore under subsection 39(1) of the *Social Security Tribunal Rules of Procedure* (Rules of Procedure) and section 59 and subsection 64(1) of the DESDA, the parties request that the Appeal Division render a decision based on the following terms:

- (a) The Respondent is deemed disabled within the definition of paragraph 42(2)(a) the CPP as of her prorated

³ See agreement between the Minister and the Respondent signed on February 13, 2023, AD3.

minimum qualifying period of October 2016;

- (b) The earliest the Respondent can be deemed disabled is February 2018 with benefit payment starting June 2018 pursuant to subsection 69(1) of the CPP as her application date is May 2019;
- (c) Proceeding in this manner is both cost-effective and efficient for both parties and consistent with subsection 8(1) of the *Rules of Procedure*.

Analysis

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

[10] The evidence shows that the Respondent earned the following amounts after the end of her MQP:

2013 — \$14,695

2014 — \$23,594

2015 — \$39,253

2016 — \$4,778⁴

The Respondent testified that, with the help of medication, she forced herself to work through pain until the moment arrived when she couldn't do it anymore.⁵

[11] As the Minister noted, the *Canada Pension Plan* associates disability with an income threshold. Under section 68.1 of the *Canada Pension Plan Regulations*, "substantially gainful" salary or wages are equal to or greater than the maximum annual amount that a person can receive as a disability pension. For three of the four years listed above, the Respondent was making more than that amount.

[12] In its decision, the General Division mentioned the income threshold in passing. However, it did not explain how someone who was incapable of regular work in 2005 was able to perform 3½ years of substantially gainful employment a decade later. The

⁴ See Respondent's Service Canada Earnings and Contributions Detail, GD2-169.

⁵ See General Division decision, paragraph 45.

General Division's failure to apply section 68.1 amounted to an error of law. Its failure to address highly material information violated a principle of natural justice.

[13] For these reasons, the General Division's decision must be overturned. I have the power to give the decision that the General Division should have given. I find that the Respondent became disabled as of October 2016 — the last month, pursuant to the proration provision, in which the Claimant had CPP disability coverage.

Conclusion

[14] The appeal is allowed in accordance with the parties' agreement. The General Division made an error when it found that the Claimant had a severe and prolonged disability in 2005.

[15] I have decided to substitute my decision for the General Division's and find the Respondent disabled as of October 2016. Since the Minister received her application in May 2019, the Respondent is deemed disabled as of February 2018.⁶ The start date of the Respondent's disability pension therefore remains June 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.