



Citation: *GD v Minister of Employment and Social Development*, 2024 SST 135

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: G. D.

Respondent: Minister of Employment and Social Development
Representative: Andrew Kirk

Decision under appeal: General Division decision dated June 29, 2023
(GP-23-61)

Tribunal member: Neil Nawaz

Type of hearing: In Writing
Decision date: February 14, 2024
File number: AD-23-886

Decision

[1] I am dismissing this appeal. The Appellant is not entitled to a Canada Pension Plan (CPP) disability pension.

Overview

[2] The Appellant is a 62-year-old former bricklayer with a history of hypertension and diabetes. In the late 1990s, he broke his right leg, which impaired his mobility. He hasn't had a full-time job since 2011 and has worked only intermittently since then.

[3] The Appellant applied for a CPP disability pension on November 29, 2012.¹ The Minister refused the application after finding that the Appellant was not disabled during his minimum qualifying period (MQP), which ended on December 31, 2013. On May 19, 2016, this Tribunal's General Division upheld the Minister's refusal, and on August 29, 2017, the Appeal Division denied leave to appeal.

[4] The Appellant re-applied for a CPP disability pension on January 28, 2022. The Minister again refused the application, and the General Division again dismissed his appeal. The General Division found that, because of a legal principle known as *res judicata*, it was barred from deciding a matter that it had already decided. The General Division also found that the Appellant was not entitled to the post-retirement disability benefit (PRDB).

[5] The Appellant then applied for permission to appeal to the Appeal Division. Last year, one of my colleagues on the Appeal Division granted the Appellant permission to appeal. At the Appellant's request, I decided this matter based on a review of the written record.

Issues

[6] In this appeal, I had to answer three questions:

¹ The Appellant had previously applied for a CPP disability pension on January 11, 2011. The Minister refused that application initially and on reconsideration. The Appellant did not appeal those refusals.

- Does *res judicata* prevent me from considering the Appellant's CPP disability claim?
- If *res judicata* doesn't apply, did the Appellant have a severe and prolonged disability as of December 31, 2013?
- Is the Appellant entitled to the PRDB?

Analysis

[7] Having considered submissions from both parties, I have concluded that I can't consider the Appellant's claim for a CPP disability pension.

***Res judicata* prevents this matter from being heard again**

[8] A well-established legal principle called *res judicata* prevents courts and tribunals from considering cases that have already been decided. The Federal Court has stated that *res judicata* specifically applies to decisions of the Social Security Tribunal.²

[9] In a case called *Danyluk*, the Supreme Court of Canada held that there are sound public policy reasons for *res judicata*:

An issue, once decided, should not generally be re-litigated to the benefit of the losing party and the harassment of the winner. A person should only be vexed once in the same cause. Duplicative litigation, potential inconsistent results, undue costs, and inconclusive proceedings are to be avoided.³

[10] There are exceptions to the principle, but the Appellant does not fall under any of them.

² See *Belo-Alves v Canada (Attorney General)*, 2014 FC 1100.

³ See *Danyluk v Ainsworth Technologies Inc.*, 2001 SCC 44.

– **Matters can't be heard again unless they substantially differ from what came before**

[11] *Danyluk* set out a two-step analysis for applying *res judicata*.⁴ First, the following conditions must be met:

- The prior proceeding involved the same parties as the current one;
- It addressed the same issues; and
- It led to a final decision.

[12] Second, even if these three conditions are met, *Danyluk* permits decision-makers some discretion in whether to apply *res judicata*. However, that discretion must be exercised by keeping in mind factors such as

- the circumstances that led to the prior proceeding;
- the wording of the statute;
- the purpose of the legislation;
- the availability of appeal;
- the safeguards available to the parties at the administrative level;
- the expertise of the decision-maker at the administrative level; and
- the potential for injustice.

[13] Applying the *Danyluk* analysis, I find that the Appellant's ability to work before December 31, 2013 has already been adjudicated. I am unwilling to use my discretion to hear this matter again.

– **The Appellant's current appeal involves issues that the General Division addressed in its May 2016 decision**

[14] On May 17, 2016, the General Division decided that the Appellant did not have a severe and prolonged disability as of December 31, 2013.

⁴ See *Danyluk*, paragraph 18.

[15] I can't revisit that decision, because *res judicata* bars me from considering matters that the General Division has already decided. In this case, the General Division's May 2016 decision

- involved the same parties – the Appellant and the Minister;
- addressed the same issues – whether the Appellant had a severe and prolonged disability by December 31, 2013; and
- was final – the Appellant never sought judicial review.

[16] As well, the medical evidence about the Appellant's medical condition and work history before December 31, 2013 is essentially the same in all of his applications.

[17] All three of the conditions in *Danyluk's* first step have met. As for the factors in the second step, I see no reason not to apply *res judicata*. The General Division held a hearing by teleconference, and the Appellant attended it and gave evidence. The member who heard his case explained the issues thoroughly, and I am satisfied that the Appellant knew the case he had to make. I can't say he was deprived of an opportunity to have his CPP disability claim fairly assessed and adjudicated. I see no injustice on the face of the General Division's decision.

I can't consider whether the Appellant had a severe and prolonged disability as of December 31, 2013

[18] CPP disability claimants usually have to show that their disability was severe and prolonged during their coverage period. However, I am barred from considering that question here because, as noted, the General Division already decided it nearly eight years ago.

The Appellant is not entitled to the PRDB

[19] The PRDB is a relatively new benefit that is designed to provide disability protection for CPP contributors who have not reached age 65. In order to receive the

PRDB, applicants must establish an MQP by showing specific contributions to the CPP.⁵

[20] In this case, since the Appellant had more than 25 years of earnings in total, he had to show that he made CPP contributions in three of the six calendar years immediately before his application date.⁶ The Appellant applied for disability benefits on January 28, 2022, but he did not register contributions in any of the years from 2016 to 2021 inclusively.⁷ As a result, he does not have an MQP for the purpose of the PRDB.

Conclusion

[21] The Appellant's claim for the CPP disability pension is *res judicata*. Because this matter has already been decided, I can't consider whether he had a severe and prolonged disability as of December 31, 2013.

[22] The Appellant has no coverage for the PRDB because he has no CPP contributions in the six calendar years preceding his application.

[23] The appeal is dismissed.



Member, Appeal Division

⁵ See *Canada Pension Plan*, sections 44(1)(h), 44(4), and 70.01

⁶ In a case called *N.L. v Minister of Employment and Social Development*, 2020 SST 741, the Appeal Division explained how to determine an MQP for PRDB purposes.

⁷ See the Appellant's updated record of earnings, GD5-24.