



**EDITOR'S NOTE:** This document is subject to editorial revision before its reproduction in final form in the *Federal Courts Reports*.

## PENSIONS

Application for judicial review of Social Security Tribunal (SST), Appeal Division decision (2022 SST 1237) overturning General Division decision (2022 SST 1238) dismissing respondent's appeal of ministerial decision terminating respondent's disability pension under *Canada Pension Plan*, R.S.C., 1985, c. C-8 (CPP) — Respondent, 65-year-old man who worked for many years as pharmacist — In January 2010, respondent stopped working due to chronic back pain caused by car accident; applied for CPP disability pension — Minister of Employment and Social Development (Minister) agreed that respondent had severe disability, was entitled to benefits — Disability is "severe" if it renders person "incapable regularly of pursuing any substantially gainful occupation" (CPP, s. 42(2)(a)(i)) — In 2020, Minister terminated respondent's disability pension as of July 2016 — Respondent's medical condition had not improved; he continued to have functional limitations affecting his ability to work — However, from July 2016 respondent had been paid to work as part-time consultant in his son's business — In 2016, 2017, 2018, respondent earned amounts that were over "substantially gainful" threshold set in *Canada Pension Plan Regulations*, C.R.C., c. 385, s. 68.1(1) (Regulations) — Minister determined that, because of these earnings, respondent's disability was no longer "severe" as of July 2016, that \$30,438.88 of disability pension amounts had been overpaid — Respondent requested reconsideration of cessation of benefits, which Minister denied — In overturning General Division decision, Appeal Division concluded that General Division had erred in law by failing to adequately consider whether respondent was benevolently employed, not in "substantially gainful occupation", notwithstanding his earnings — Appeal Division made decision that it determined General Division should have made, concluding that respondent was engaged in benevolent employment, not an "occupation" — Accordingly, despite "substantially gainful" earnings, respondent continued to have "severe" disability, was entitled to disability pension — Applicant seeking to have Appeal Division's decision set aside, decision by General Division restored — Issue was whether Appeal Division's decision reasonable — To qualify for CPP disability pension, individual must have disability that is both "severe", "prolonged" (CPP, s. 42(2)(a)) — Sole issue Appeal Division considering was whether respondent's disability continued to be "severe" as of July 2016 — Concept of "benevolent employment" examined; term not appearing in CPP or Regulations but featuring prominently in Appeal Division's decision — Term was in Canada Pension Plan Adjudication Framework (Framework), document issued by Department of Employment and Social Development to provide CPP decision makers with factors, legal principles required to adjudicate disability pension applications — Hearings in present matter proceeded on basis that concept of "benevolent employment" could apply to respondent — Framework defining "benevolent employer" — Appeal Division determined that General Division had erred in law within scope of *Department of Economic and Social Development Act*, S.C. 2005, c. 34, (DESDA) s. 58(1) in failing to fully consider whether respondent's employment in his son's business was benevolent and, accordingly, whether he had "substantially gainful occupation" — Observed that while Regulations, s. 68.1(1) defining what was meant by "substantially gainful", not defining "occupation" or other words in CPP, s. 42(2)(a)(i) — Rejected notion that Regulations, s. 68.1(1) obviates need to consider all of words in CPP, s. 42(2)(a)(i), which conclusion was reasonable — Indeed, Regulations, s. 68.1 prescribing "substantially gainful" amounts in respect of occupation — Appeal Division reasonably concluding that "occupation" in context of CPP, s. 42(2)(a)(i) not including benevolent employment — Was also reasonable for Appeal Division to consider Framework concept of "benevolent employment" in determining whether respondent was "incapable regularly of pursuing

any substantially gainful occupation” — Thus, Appeal Division’s interpretation of CPP, s. 42(2)(a)(i), Regulations, s. 68.1(1) reasonable — Appeal Division’s finding of benevolent employment reasonable — When respondent’s son became authorized dealer for cellphone company in 2011, respondent provided advice without pay — In 2016, when respondent’s income became insufficient to pay his bills, he was “hired” to work in his son’s business, was paid salary — Son employed respondent out of sense of obligation, rather than due to need for his services — Appeal Division reasonably concluded that respondent’s employment was benevolent, not “occupation” — Was open to Appeal Division to conclude that respondent continued to have “severe” disability despite earning amounts exceeding “substantially gainful” threshold — Conclusion was justified in relation to relevant factual, legal constraints; reasons reflected rational chain of analysis — Application dismissed.

CANADA (ATTORNEY GENERAL) V. IBRAHIM (A-269-22, 2023 FCA 204, Biringer J.A., reasons for judgment dated October 5, 2023, 17 pp.)