

Citation: *R. A. v. Minister of Human Resources and Skills Development*, 2014 SSTAD 246

Appeal No: AD-14-199

BETWEEN:

R. A.

Appellant

and

Minister of Human Resources and Skills Development

Respondent

and

I. A.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division – Appeal Decision

SOCIAL SECURITY TRIBUNAL MEMBER: VALERIE HAZLETT PARKER

HEARING DATE : September 22, 2014

TYPE OF HEARING On the Written Record

DATE OF DECISION: September 25, 2014

[1] The appeal is dismissed.

INTRODUCTION

[2] On October 1, 2013, the General Division of the Social Security Tribunal (the Tribunal) summarily dismissed the Appellant's claim to reconsider the Added Party's application for a division of unadjusted pensionable earnings under *the Canada Pension Plan*.

[3] The Appellant filed an Appeal from that decision with the Appeal Division of the Tribunal on April 7, 2014.

[4] The hearing of this appeal was conducted on the written record. The Appellant and Respondent filed written submissions; the Added Party did not.

THE LAW

[5] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the only grounds of appeal are the following:

- a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[6] Subsection 59(1) of the DESD Act provides that the Appeal Division may dismiss the appeal, give the decision that the General Division should have given, refer the matter back to the General Division for reconsideration in accordance with any directions that the Appeal Division considers appropriate or confirm, rescind or vary the decision of the General Division in whole or in part.

ISSUE

[7] The Tribunal must decide whether the division of unadjusted pensionable earnings should be set aside.

SUBMISSIONS

[8] The Appellant submitted that the appeal should be allowed because:

- a) The Respondent has made contradictory written statements about which provinces in Canada permit parties to opt out of a *Canada Pension Plan* (CPP) division of unadjusted pensionable earnings (DUPE) on separation;
- b) His wife was a resident of Alberta when his separation agreement was signed, which permits parties to opt out of DUPE;
- c) Paragraph 4.8 of the Separation Agreement provides that neither party will apply for DUPE.

[9] The Respondent submitted that the appeal should be dismissed because:

- a) The General Division decision to summarily dismiss the Appellant's application was reasonable; and
- b) The Appellant and his spouse were not able to contract out of DUPE as their agreement was governed by the law of Newfoundland and Labrador, which does not permit this,

ANALYSIS

Standard of Review

[10] Neither party made any submissions about what standard of review should be applied to a review of the General Division in this case, although the Respondent argued that the General Division's decision was reasonable. In *Dunsmuir v. New Brunswick* 2008 SCC 9, the Supreme Court of Canada set out clearly how the issue of standard of review of

administrative tribunal decisions is to be considered. In summary, the Supreme Court of Canada concluded that for questions of fact, questions of mixed fact and law, or questions of law related to the interpretation of the tribunal's own statute the standard of review is reasonableness; for questions of law that are not confined to the interpretation of the tribunal's own statute or related legislation the standard of review is correctness.

[11] In this case, the nature of the question is the correct interpretation of the CPP, having regard also to matrimonial legislation in Newfoundland and Labrador. From this I find that the standard of review of the General Division decision is reasonableness as the decision depends on the interpretation of tribunal's own statute and related legislation.

Application of Standard of Review to this Case

[12] In this case, the Appellant and his estranged wife signed a Separation Agreement dated March 14, 2007. The Agreement provided that it was governed by the law of Newfoundland and Labrador.

[13] The Separation Agreement provided that neither party would apply for DUPE. The Appellant's estranged wife subsequently applied for and received DUPE. The Appellant claimed that she was prohibited from doing so by their agreement. This claim was summarily dismissed by the General Division of the Tribunal.

[14] The CPP is clear. Section 55.1 provides that a DUPE shall take place upon the granting of a divorce, or upon application by one spouse upon the end of a marriage. Paragraph 55.2(3)(a) is also clear that a written agreement of the parties is not binding on the Minister if a party applies for DUPE. Paragraph 55.2(3)(b) states that an agreement prohibiting DUPE is binding on the Minister if it is permitted by provincial law that governs the agreement. No law in Newfoundland and Labrador permits this. The General Division decision set out the law correctly, and applied it correctly to the facts of this case. The decision was reasonable.

[15] The Respondent has penned correspondence in these proceedings that attempted to explain the law to the Appellant. While these letters may not have been clear, and may have confused the Appellant, that is not germane to my decision. I am concerned only with whether the General Division decision was reasonable.

CONCLUSION

[16] The appeal is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division