

**Citation:** *Estate of A. B. v. Minister of Employment and Social Development*, 2015 SSTGDIS 43

**Date:** May 8, 2015

**File number:** GP-13-1913

**GENERAL DIVISION- Income Security Section**

**Between:**

**Estate of A. B.**

**Appellant**

**and**

**Minister of Employment and Social Development  
(formerly known as the Minister of Human Resources and Skills Development)**

**Respondent**

**Decision by:** Raymond Raphael, Member, General Division - Income Security Section

## REASONS AND DECISION

### INTRODUCTION

[1] On March 27, 2013 the Appellant applied for post mortem CPP retirement pension in relation to the late A. B. (the deceased contributor) who passed away at the age of 97 on February 17, 2013. The Respondent approved the retirement pension effective March 2012. The Appellant requested a reconsideration of the effective date and takes the position that the retirement pension should be payable from May 1980, when the contributor turned 65. The Respondent denied the request for additional retroactive payments at the reconsideration level. The Appellant appealed the reconsideration decision to the Office of the Commissioner of Review Tribunals (OCRT) and this appeal was transferred to the Tribunal in April 2013.

### ISSUE

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

### THE LAW

[3] Section 257 of the *Jobs, Growth and Long-term Prosperity Act* of 2012 states that appeals filed with the OCRT before April 1, 2013 and not heard by the OCRT are deemed to have been filed with the General Division of the Tribunal.

[4] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success.

[5] Section 22 of the *Social Security Tribunal Regulations* (SST Regulations) states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

#### *Applicable CPP provisions*

[6] Section 44 (1) (a) of the CPP provides that a retirement pension shall be paid to a contributor who has reached sixty years of age.

[7] Section 60 (1) of the CPP provides that no benefit is payable to any person under this Act unless an application therefor has been made by him or on his behalf and payment of the benefit has been approved under this Act.

[8] Section 60 (5) of the CPP provides that an application for a benefit in relation to a deceased contributor is deemed to have been received on the date of death.

[9] Section 67 (3) of the CPP provides that where an application for a retirement pension is made in relation to a person who attained the age of 65 years before the date the application is received, the pension is payable commencing with the latest of

- a) the twelfth month before the month after the month in which the applicant applied or the month of January 1995, whichever is later,
- b) the month in which the applicant reaches the age of sixty-five years, or
- c) the month chosen by the applicant in the application.

## **THE FACTS**

[10] Although the deceased contributor turned 65 in May 1980, she never applied for a retirement pension. She died on February 17, 2013 and on March 27, 2013 the Appellant made a post-mortem application for a retirement pension. The Respondent applied s. 60 (5) of the CPP and deemed the application to have been received on February 17, 2013 (the date of death). The Respondent also applied s. 67 (3) of the CPP and approved the retirement pension effective March 2012 (the twelfth month before the month after the month in which the application was deemed to have been made). The Respondent takes the position that the retirement pension should have been payable effective May 1980 (the month the deceased contributor turned 65).

## **SUBMISSIONS**

[11] The Appellant submitted that the retirement pension should be payable effective May 1980 for the following reasons:

- a) The deceased contributor always relied on her husband to make financial decisions, and on his passing away in September 1973 she started to receive survivor's benefits. The

Appellant believes that the deceased contributor didn't apply for a retirement benefits when she turned 65 because she thought what she was receiving included CPP retirement.

- b) The deceased contributor's children did not learn that she was not receiving the CPP retirement until after she passed away, and they were advised by Service Canada that she would have been entitled to an additional \$320 per month when she turned 65 ( an additional \$331 per month at the time of her death);
- c) Based on \$320 per month the Appellant should have received an additional \$122,880 (\$320 per month for 32 years);
- d) There is some oversight in the CPP Act which does not acknowledge and/or pay just entitlement to individuals who have not applied for CPP due to their lack of knowledge that they may qualify or their not understanding the Act;
- e) In its response to the noticed of intent to summarily dismiss, the Appellant submitted that consideration should be given to extenuating circumstances as outlined in the Appellant's correspondence dated June 10, 2013, July 22, 2013 and April 7, 2015.

[12] The Respondent submitted that the retirement pension should be payable effective March 2012 because:

- a) The CPP provisions clearly establish that the application is deemed to have been received on February 17, 2013 and that payments are payable commencing March 2012;
- b) Accordingly, the reconsideration decision is correct and the appeal should be dismissed.

## **ANALYSIS**

[13] In compliance with section 22 of the SST Regulations, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions.

[14] The Tribunal is bound by the decisions of the Federal Court of Appeal in *Meyer v. Canada (Attorney General)*, 2003 FCA 107 and of the Federal Court in *Thibeault Estate v. Canada (Attorney General)*, 2005 FC 47. In the *Meyer* decision the deceased contributor died at the age of 85 without having applied for CPP retirement and in the *Thibeault* case the deceased contributor died at the age of 87 without having applied. In both cases the court decided that the estate was limited to 11 months retroactive payments from the date of death by reason of the application of sections 60 (5) and 67 (3) of the CPP. Both of those decisions are binding on the Tribunal.

[15] The Respondent correctly applied the applicable CPP provisions and determined that s. 60 (5) deems the application to have been received on February 17, 2013 and that s. 67 (3) limits the retroactivity of the payments to March 2012. There is no basis on which the payments can be made from an earlier date.

[16] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Appellant raises various equitable considerations; however, the Tribunal is bound by the CPP provisions. It is not empowered to exercise any form of equitable power in respect of the appeals coming before it. It is a statutory decision-maker and is required to interpret and apply the provisions as they are set out in the CPP: *MSD v Kendall* (June 7, 2004), CP 21690 (PAB).

[17] The Appellant is not entitled to retrospective payments for any period prior to March 2012.

[18] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

## **CONCLUSION**

[19] The appeal is summarily dismissed.

Raymond Raphael  
Member, General Division - Income Security