

**Citation: *E. G. v. Minister of Employment and Social Development*, 2015 SSTGDIS 83**

**Date: August 6, 2015**

**File number: GP-13-2410**

**GENERAL DIVISION - Income Security Section**

**Between:**

**E. G.**

**Appellant**

**and**

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

**Respondent**

**Decision by: Pierre Vanderhout, Member, General Division - Income Security Section**

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Appellant applied for a *Canada Pension Plan* (“CPP”) death benefit and a CPP survivor’s pension. The Respondent denied the application initially and upon reconsideration. In an interlocutory decision of the Social Security Tribunal (“Tribunal”) dated June 6, 2015, the Appellant was found to have appealed to the Tribunal on August 12, 2014.

### **ISSUE**

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

### **THE LAW**

[3] 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.

[4] 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.

[5] Paragraphs 44(1)(c) and (d) of the *Canada Pension Plan* state that a CPP death benefit and a CPP survivor’s pension can only be paid if the deceased contributor made contributions for not less than the minimum qualifying period.

[6] Subsection 44(3) of the *Canada Pension Plan* says that a contributor shall be considered to have made contributions for not less than the minimum qualifying period if contributions were made for at least ten years or for at least one-third of the years wholly or partly within his contributory period.

### **EVIDENCE**

[7] The Appellant applied for the CPP death benefit and CPP survivor’s pension in connection with the death of her husband A. G. (the “Contributor”) on May 2, 2013. During his

lifetime, the Contributor made valid contributions to the CPP for a total of nine years. The Contributor's contributory period began in January of 1966 and ended in September of 2003.

[8] The Contributor was laid off from his job in 2003 at age 69 and was unable to find re-employment prior to his death. The Contributor also struggled with health issues in the years prior to his death that eventually made employment impossible.

## **SUBMISSIONS**

[9] The Appellant made relatively lengthy submissions in connection with the potential summary dismissal of this matter. In essence, the Appellant has submitted that:

- a) The success of the CPP is based on moral principles and its adherence to the rules of natural justice and procedural fairness;
- b) The Tribunal does not have a legal obligation to follow its own decisions or those of the legacy tribunals;
- c) The Minister shall exercise its power relating to social development with a view to promoting social well-being and income security; and
- d) The Contributor made CPP contributions for 90% of the required number of years. It would be a marked departure from natural justice, fairness and reasonableness to deny the Appellant even an offset or prorated percentage of benefits in acknowledgment of the contributions that were made by her husband (the Contributor) to the CPP.

[10] The Respondent was not asked to make submissions on the potential Summary Dismissal of this appeal.

## **ANALYSIS**

[11] 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.

[12] Based on the materials in the Appellant's file and the submissions of the Appellant, there are two questions to be decided. Firstly, did the Contributor make enough contributions to the CPP in order to trigger the Appellant's eligibility for the claimed benefits? If the answer to that question is "no", are there other considerations that make it inappropriate for the Tribunal to summarily dismiss the matter?

[13] The first question has essentially been conceded by the Appellant. As noted above, paragraphs 44(1)(c) and (d) of the *Canada Pension Plan* state that a CPP death benefit and a CPP survivor's pension can only be paid if the deceased contributor made contributions for not less than the minimum qualifying period. Subsection 44(3) of the *Canada Pension Plan* says that a contributor shall be considered to have made contributions for not less than the minimum qualifying period if contributions were made for at least ten years or for at least one-third of the years wholly or partly within his contributory period.

[14] In this case, the contributory period began in January of 1966 and ended in September of 2003, which means that contributions would have been required for at least 13 years in order to meet the "one-third criterion". As this is unfavourable to the Appellant, the default minimum of ten years of contributions applies. The evidence discloses, and the Appellant has admitted, that the Contributor made valid contributions for only nine years. The Appellant submitted no evidence to suggest that the number of contribution years was incorrect. The Tribunal also notes that the exclusionary circumstances set out in paragraph 44(3)(a) do not assist the Appellant in reducing the number of required contribution years to less than ten.

[15] The Tribunal therefore finds that the Contributor needed to make valid CPP contributions for at least ten years in order to trigger the Appellant's potential eligibility for a CPP death benefit and a CPP survivor's benefit. However, as the Contributor made only nine years of valid contributions, the Tribunal finds that the eligibility requirements set out in paragraphs 44(1)(c) and (d) of the *Canada Pension Plan* have not been met.

[16] This would appear to be dispositive of the matter. However, the Appellant has made submissions suggesting that the Tribunal choose not to strictly apply the eligibility requirements in this particular case.

[17] The Appellant has raised the principles of natural justice and procedural fairness, in connection with the suggestion that the Appellant could be awarded partial benefits rather than the full benefits prescribed by legislation. There are four key concepts captured within the principles of natural justice and procedural fairness: the right to know the case, the right to be heard (*audi alteram partem*), the right to an impartial decision-maker, and the right to be informed of and to understand the decision.

[18] The principles of natural justice and procedural fairness apply to the process followed by the Tribunal to reach its decisions. A party would certainly not be precluded from pursuing arguments on those principles (particularly at the appellate level) based on specific Tribunal actions. However, the Appellant has not made any submissions on how the Tribunal has not followed those principles: there has only been a suggestion that the law should be interpreted in accordance with those essentially procedural principles. Indeed, it appears that concerns with natural justice and procedural fairness can only be properly assessed once the Tribunal has reached a decision. The Tribunal accordingly finds that the Appellant's references to natural justice and procedural fairness are premature and cannot be adjudicated by the Tribunal.

[19] The Appellant submitted that the Tribunal does not have a legal obligation to follow its own decisions of those of the legacy tribunals. However, the finding made by the Tribunal with respect to the sufficiency of the Contributor's contributions is not based on the application of previous tribunal decisions. The finding is based on a simple application of the governing legislation to the undisputed facts of this case.

[20] The remaining submissions of the Appellant suggest that the Tribunal should not strictly apply the statutory provisions in this case as it would not promote social well-being and would be unfair to a Contributor who came so close to making the required number of contributions during his lifetime.

[21] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. It is not empowered to make findings on the promotion of social well-being.

[22] The Tribunal is also required to interpret and apply the provisions as they are set out in the *Canada Pension Plan*. The legislature has seen fit to set minimum contributory requirements and the Tribunal can only apply those requirements as they are set out in the applicable legislation. The Tribunal has no power to grant partial benefits in respect of contributors who only partially meet the legislated requirements.

[23] The Tribunal therefore finds that there is no basis on which to vary or disregard its finding that the Contributor did not make sufficient contributions to trigger eligibility for a CPP death benefit and a CPP survivor's pension.

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

## **CONCLUSION**

[25] The appeal is summarily dismissed.

Pierre Vanderhout  
Member, General Division - Income Security