

**Citation: *P. B. v. Minister of Employment and Social Development*, 2015 SSTGDIS 88**

**Date: August 18, 2015**

**File number: GT-101806**

**GENERAL DIVISION- Income Security Section**

**Between:**

**P. B.**

**Appellant**

**and**

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

**Respondent**

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

## **REASONS AND DECISION**

### **INTRODUCTION**

[1] The Appellant initially applied for a division of unadjusted pensionable earnings (DUPE) on December 12, 1991. That application was denied on January 10, 1992. In the denial letter there was no mention of the possibility of the Appellant obtaining a waiver of the 36 month time limit from her former spouse. The Appellant did not request a reconsideration of that denial.

[2] The Appellant's former spouse M. B. passed away on December 1, 1996 and the Appellant's current application for a division of unadjusted pensionable earnings (DUPE) was submitted on February 13, 2008. The Respondent denied the application initially and upon reconsideration. 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**

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

### **THE LAW**

[4] 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.

[5] 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.

[6] 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.

[7] Section 55(1) of the CPP provides that subject to certain conditions, where former spouses divorced after January 1, 1978 and before January 1, 1987, the application for a DUPE

must be made within 36 months of the divorce, unless both former spouses agree in writing to the application being made after this time period.

## **BACKGROUND AND EVIDENCE**

[8] The Appellant and the late M. B. were married on August 11, 1967 and divorced on November 25, 1985. M. B. passed away on December 14, 1996. The Appellant's current application for a DUPE was made in February 2008 (more than 22 years after the divorce). Her initial application was made in December 1991 (more than six years after the divorce). Since the Appellant's former spouse is deceased he is not able to sign a waiver agreeing to waive the three year time limit set out in s. 55 (1) of the CPP.

[9] The current appeal was put in abeyance because another individual brought a charter challenge to the three year time limitation. The Appeal Division of the Tribunal recently heard this matter and concluded that s. 55(1) does not violate the Charter. A copy of that decision was sent to the Appellant on April 17<sup>th</sup>, last.

[10] The deadline has passed and no party has filed an appeal to the Federal Court of Appeal. Accordingly, the decision of the Appeal Division is of persuasive authority for the General Division.

## **SUBMISSIONS**

[11] The Appellant submitted that:

- a) She was given erroneous advice in the January 1992 denial letter since there was no mention of the possibility of her obtaining a waiver from her former spouse;
- b) If this had been mentioned she would have been able to obtain a waiver from her former spouse prior to his passing away in December 1996.
- c) She was married to M. B. for 18 ½ years, and they had two children one of whom suffers from a congenital intellectual impairment. Her husband left her and their two teenage children in 1985, and she had not been in the workforce before their marriage;

- d) While married she stayed home and raised their children. She did not have any career to fall back on.

[12] The Respondent submitted that:

- a) The Appellant does not qualify for CPP credit splitting because her application was made after the 36-month time limit set out in s. 55(1) of the CPP;
- b) This time limit cannot be waived because the Appellant's former spouse is deceased.

## **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. The Appellant did not respond to this notice.

[14] The Appellant's DUPE application was made after the three year time limit set out in s. 55 (1) of the CPP. Since the Appellant's former spouse is deceased he cannot waive the time limit.

[15] The Tribunal has considered the Appellant's position that she was given erroneous advice in the January 1992 denial letter since there was no mention of the possibility of her obtaining a waiver from her former spouse.

[16] S. 66 (4) of the CPP provides that where the Minister is satisfied that, as a result of erroneous advice or administrative error in the administration of the Act, any person has been denied a division of unadjusted earnings under section 55 or 55.1, the Minister shall take such remedial action as the Minister considers appropriate to place the person in the position that the person would be in under this Act had the erroneous advice not been given or the administrative error not been made.

[17] The Tribunal has no jurisdiction to deal with this issue. Only the Minister and the Federal Court (if the Appellant pursues an appeal of the Minister's decision) have such jurisdiction: *Pincombe v. AG Canada* [1995] F.C.J 1320

[18] The Tribunal is sympathetic to the Appellant's circumstances and recognizes that her not receiving the DUPE, to which she would otherwise have been entitled, because of the three year time limitation is unjust.

[19] Unfortunately, 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).

[20] The Tribunal has no authority to make exceptions to the provisions of the CPP nor can it render decisions on the basis of fairness, compassion, or extenuating circumstances.

[21] Regrettably, the Tribunal must conclude that the Appellant is not eligible for a DUPE.

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

## **CONCLUSION**

[23] The appeal is summarily dismissed.

Raymond Raphael  
Member, General Division - Income Security