

Citation: *C. W. v. Minister of Employment and Social Development*, 2015 SSTGDIS 101

Date: September 4, 2015

File number: GP-14-393

GENERAL DIVISION - Income Security Section

Between:

C. W.

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 turned 65 in November 2013 and as of December 2013 the survivor's portion of his combined *Canada Pension Plan* (CPP) retirement and survivor's benefits was reduced. The Appellant requested a reconsideration of the amount of his combined benefits. The Respondent denied the request for reconsideration and the Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on January 14, 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] Subsection 64(1) of the DESD Act provides that the Tribunal may decide any question of law or fact that is necessary for the disposition of any application made under the Act.

[5] Subsection 64(2) of the DESD Act provides that in the case of an application relating to the CPP, the Tribunal may only decide questions of law or fact as to

- a) whether any benefit is payable to a person or its amount;
- b) whether any person is eligible for a division of unadjusted pensionable earnings or its amount;
- c) whether any person is eligible for an assignment of a contributor's retirement pension or its amount; and
- d) whether a penalty should be imposed under Part 11 of that Act or its amount.

[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 58 of the CPP sets out the provisions for calculation of the amount of a survivor's pension. Subsection 58(2)(a) sets out the calculations for a survivor who has not reached the age of sixty-five and whose retirement pension commences to be payable after December 31, 1997. Subsection 58(2)(c) set out the calculations for a survivor who has reached sixty-five years of age, was born after December 31, 1932, and whose retirement pension commences to be payable after December 31, 1997.

[8] Subsection 20(1)(a) of the *Social Security Tribunal Regulations* (SST Regulations) provides that if the constitutional validity, applicability, or operability of any provision of the CPP is to be put at issue before the Tribunal, the party raising the issue must file a notice with the Tribunal that sets out the provision that is at issue, and contains any submissions in support of the issue that is raised.

Potential Charter Challenge

[9] In his appeal received on January 14, 2014 the Appellant stated that he believed that he was being discriminated against because he turned 65. This allegation raises possible Charter issues.

[10] On August 16, 2015 the Tribunal notified the Appellant that if he wishes to pursue a constitutional challenge before the Tribunal, he must file a notice in accordance with subsection 20(1)(a) of the SST Regulations no later than August 20, 2015. A copy of this provision (see paragraph 8, supra) was set out in the notice.

[11] The notice also advised the Appellant that if he did not file the required notice by that date, his appeal will proceed as a regular appeal and he will not be given the opportunity to raise any constitutional issues during the appeal process.

[12] The Appellant did not file the requisite notice. Since the requirements under subsection 20(1)(a) of the SST Regulations have not been met, the Charter issues are not properly before the Tribunal.

UNDISPUTED FACTS

[13] The Appellant turned 65 in November 2013 and as of December 2013 the survivor's portion of his combined retirement and survivor's benefits was reduced.

SUBMISSIONS

[14] The Appellant submitted that:

- a) He cannot absorb the loss of income because his and his children's expenses do not go down just because he turned 65;
- b) He suffers from leukemia, type 2 diabetes, and various other ailments;
- c) He feels that he is being victimized because he turned 65.

[15] The Respondent submitted that:

- a) The Appellant is receiving the correct monthly benefit upon the calculations outlined in the CPP and CPP Regulations;
- b) Because the Appellant was under 65 at the time his combined benefits began the survivor's portion of his benefit was calculated in accordance with s. 58(2)(a) of the CPP. When he turned 65, he no longer qualified for the calculation under s. 58(2)(a) and the survivor's portion of his benefit was recalculated in accordance with s. 58(2)(c).
- c) The most significant change is that persons who turn 65 are no longer eligible for the flat-rate portion of their survivor's benefits. This results in a reduction in the survivor's benefits portion of the combined benefit.

ANALYSIS

[16] 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.

[17] When the Appellant turned 65 he no longer qualified for the calculation under s. 58(2)(a) of the CPP and his benefit was recalculated in accordance with s. 58(2)(c). The most significant change to this calculation is that he is no longer eligible to receive a flat-rate portion as part of the survivor's pension.

[18] Although the calculations are complex they are set out in detail in the Respondent's reconsideration letter dated December 17, 2013. The Appellant does not dispute the accuracy of the calculations and has not suggested that he is not receiving the correct amount in accordance with the applicable CPP provisions.

[19] The Tribunal recognizes that the Appellant believes that the amount he is receiving does not take into account his increased expenses and medical disabilities; however, he is required to demonstrate why the calculation of the amount challenged is incorrect.

[20] 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). 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] The amount of the Appellant's combined survivor's and retirement benefit has been correctly calculated by the Respondent.

[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