

Citation: *S. L. v. Minister of Employment and Social Development*, 2015 SSTGDIS 100

Date: September 3, 2015

File number: GT-124057

GENERAL DIVISION - Income Security Section

Between:

S. L.

Appellant

and

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

Respondent

and

R. L.

Added Party

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

Heard by Questions and answers on February 17, 2015 to September 3, 2015

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a division of unadjusted pensionable earnings (DUPE) on July 8, 2011. On November 15, 2012 the Respondent approved the application for the period from January 1971 to December 1998. The DUPE resulted in a reduction of the Appellant's retirement pension from \$570.75 to \$562.37. The Appellant appealed the calculation of the amount of her retirement pension to the Office of the Commissioner of Review Tribunals (OCRT) and the appeal was transferred to the Social Security Tribunal (Tribunal) in April 2013.

[2] The hearing of this appeal was by Questions and answers for the following reasons:

- a) The facts do not seem to be in issue.
- b) A review and explanation regarding the principles behind the accounting in this matter may be sufficient to complete the record and dispose of the appeal.

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] Section 64 (1) of the Department of Employment and Social Development Act (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] Section 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.

ISSUE

[6] Has the Respondent correctly calculated the amount of the Appellant's retirement pension?

The Questions

[7] On February 17, 2015 the Tribunal sent questions to the Respondent as follows:

The reconsideration provided for the division of the pensionable earnings of the parties. The period for division was 1971 through 1998. The result of the division was that the Appellant had a net increase of her pensionable earnings for that period of \$30,894.00.

The reconsideration actually reduced the pension she was receiving prior to the division, notwithstanding these higher pensionable earnings.

Could you please explain how the pension in her reconsideration was calculated and why it would lead to a reduction? Please provide as much detail as possible.

[8] On May 4, 2015 the Tribunal requested additional information from the Respondent as follows:

Based upon the credit split approval detailed in the Service Canada documentation dated November 21, 2012, please provide an accounting as to the monthly retirement pension amount to which you maintain the Appellant is entitled.

The Respondent's Response

[9] On June 18, 2015 the Respondent responded to the questions and submitted a request for dismissal of the appeal.

[10] In its response the Respondent set out in detail the original calculation of the Appellant's retirement benefit prior to the credit split application which covered the period from January 1976 (when the Appellant turned 18) to July 2011 the month prior to the

commencement of her retirement benefit. This calculation applied the applicable child rearing provision drop-out (CRP) for her two children as well as the applicable low or nil earning drop-out periods. This calculated the Appellant's monthly retirement pension to be \$570.75.

[11] The response also sets out the details of the recalculation of the Appellant's retirement pension after the DUPE was applied in November 2012. Effective December 2012 the new retirement pension amount was calculated to be \$562.37. The response explains that even though the total adjusted pensionable earnings increased as a result of the DUPE, the dropouts were applied differently which affected the number of contributory months from which to calculate the average monthly pensionable earnings. This resulted in a reduction of the Appellant's pension.

[12] The response details the relevant CPP provisions that were applied for the calculations and provides a chart setting out the initial and new calculations for basic contributory months (535 for both); CRP months applied (81 & 33); number of contributory months (454 & 502); number of months 15% general drop out (69 & 76); contributory months remaining (385 & 426); total adjusted pensionable earnings (\$1,000,011 & \$1,090,253); and average monthly earnings (\$2,597.43 & \$2,559.28).

[13] Although the total adjusted pensionable earnings increased, the contributory months also increased which resulted in a decrease in average monthly earnings from \$2,597.43 to \$2,559.28. As a result, the Appellant's retirement pension was reduced.

[14] On July 22, 2015, the Tribunal sent a copy of the response to the Appellant's representative and she was given until August 14, 2015 to respond. The Appellant did not respond.

SUBMISSIONS

[15] The Appellant submitted:

- a) She believes that the DUPE should have been beneficial to her rather than causing a reduction in her CPP benefits;

- b) Her total unadjusted pensionable earnings increased by \$30,894 as a result of the DUPE;
- c) She believes that a miscalculation has occurred.

[16] The Respondent submitted that the Appellant does not qualify for a disability pension because:

- a) The Respondent has reviewed the Appellant's DUPE and its effect on her retirement benefit calculations and confirmed that they have been done correctly in accordance with the applicable provisions of the CPP and CPP Regulations;
 - b) The Respondent has provided a detailed breakdown and explanation of those calculations and the impact of the DUPE;
 - c) The Appellant has not provided any information or identified any error that could affect the recalculation of her retirement benefits because of the DUPE, and she has not identified any error used in the earnings and contributions used by the Respondent;
 - d) While the Appellant disagrees with the Respondent's calculation of her retirement benefit, she has not provided the Tribunal with any error in the calculations or information that could change the calculations.
- a) Neither the Respondent nor the Tribunal has the authority to derogate from the clear provisions of the CPP in the absence of such information.

ANALYSIS

[17] Although the Appellant believes that she is not receiving enough retirement pension, she has the onus to demonstrate why the calculation is incorrect.

[18] The Respondent has provided a detailed calculation and explanation as to how its calculation was made in accordance with the CPP and CPP Regulations.

[19] The Appellant has provided no evidence as to where an error was made in the calculation. Although the Appellant correctly pointed out that her total adjusted pensionable earnings increased as a result of the DUPE, her contributory months also increased which resulted in a decrease in her average monthly earnings.

[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 Tribunal finds that the Respondent has correctly calculated the Appellant's retirement pension.

CONCLUSION

[22] The appeal is dismissed.

Raymond Raphael
Member, General Division - Income Security