



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *E. M. v. Minister of Employment and Social Development*, 2016 SSTGDIS 17

Tribunal File Number: GP-15-2870

BETWEEN:

**E. M.**

Appellant

and

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

Respondent

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Adam Picotte

DATE OF DECISION: February 5, 2016

## REASONS AND DECISION

### INTRODUCTION

[1] The Appellant applied for a *Canada Pension Plan* death benefit. The Respondent denied the application initially and, in a decision letter dated June 22, 2015, denied the application upon reconsideration. The Appellant appealed that decision to the Tribunal on October 29, 2015 beyond the 90-day limit set out in paragraph 52(1)(b) of the *Department of Employment and Social Development Act* (DESD Act).

### ISSUE

[2] The Tribunal must decide whether to allow an extension of time for the Appellant to appeal pursuant to subsection 52(2) of the DESD Act.

### ANALYSIS

[3] The Tribunal finds that the appeal was filed after the 90-day limit. The Respondent's reconsideration decision was dated June 22, 2015. The Appellant states that he received the reconsideration decision on June 22, 2015.

[4] In accordance with paragraph 52(1)(b) of the DESD Act, the Appellant had until September 20, 2015 to file an appeal.

[5] The Appellant filed an incomplete appeal on August 7, 2015. In a letter dated August 25, 2015, the Tribunal stated that the Appellant's appeal was incomplete as he failed to provide the Tribunal with the date the decision was communicated, the grounds of appeal, and his social insurance number. On October 29, 2015, the Appellant filed the missing information, at which time the appeal was complete.

[6] In deciding whether to allow further time to appeal, the Tribunal considered and weighed the four factors set out in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883. The overriding consideration is that the interests of justice be served (*Canada (Attorney General) v. Larkman*, 2012 FCA 204).

### **Continuing Intention to Pursue the Appeal**

[7] The Appellant attempted to file his notice of appeal within the timeframe allowed under the DESD Act. When advised that his appeal was incomplete he provided further information within a reasonable period of time.

[8] The Tribunal finds that the Appellant had a continuing intention to pursue the appeal.

### **Arguable Case**

[9] The Appellant claims that he is entitled to a death benefit because his spouse made the minimum contributions required to allow for a death benefit in accordance with Section 44(3) of the CPP. He stated that she worked for 3 years between 1966 and 1994 and that 3 years is the minimum requirement and therefore entitlement should follow.

[10] However, this is an incorrect reading of Section 44(3) of the CPP.

[11] Section 44(3) of the CPP sets out the following:

For the purposes of paragraphs (1)(c), (d) and (f), a contributor shall be considered to have made contributions for not less than the minimum qualifying period only if the contributor has made contributions

- (a) For at least one-third of the total number of years including either wholly or partly within his contributory period, excluding from the calculation of that contributory period any month in a year after the year in which he reaches sixty-five years of age and for which his unadjusted pensionable earnings were less to or less than his basic exemption for that year, but in no case for less than three years; or
- (b) For at least ten years.

[12] Paragraph 44(3)(a) read in context means that the calculation is based on the entire contributory period. As such consideration in the present case must be given to the entire period between 1966 and 1994. As a result the contributory period was 28 years. One-third of 28 years is 9.3 years. In order to qualify for a death benefit the contributor would have needed to have

met the minimum unadjusted pensionable earnings in 9.3 years of her 28 year contributory period. However, in reviewing the file and the record of contributions it is clear that the contributor only made sufficient contributions in 3 years.

[13] The Appellant has cited the reference to 3 years in subparagraph (a) as providing the basis of his appeal and submitted that 3 years is a sufficient period of contribution under the CPP. However this is a reference is to the minimum number of years in the one-third equation and not to the total number of years. As an example if the contributor only had a 6 year contributory period 3 years and not 2 years would need to be used to assess entitlement. Where that not the case it would cause ambiguity and conflict with the general principle of one-third of the entire contributory period.

[14] Legislation must be read, when possible, in a way that presumes congruity and not conflict. Were the Tribunal to accept the Appellant's argument it would result in a conflict within the relevant section.

[15] The Tribunal has no equitable jurisdiction to override the plain meaning of the CPP and is therefore bound in this case to determine that there is no arguable case.

### **Reasonable Explanation for the Delay**

[16] The Appellant submits that he attempted to submit the notice of appeal on time and in fact did so although he did not perfect his appeal until approximately 1 month beyond the allowable time.

[17] The Tribunal finds that the Appellant provided a reasonable explanation for the delay in filing the appeal.

### **Prejudice to the Other Party**

[18] The Respondent's interests do not appear to be prejudiced given the short period of time that has lapsed since the reconsideration decision. The Minister's ability to respond, given its resources, would not be unduly affected by an extension of time to appeal.

## **CONCLUSION**

[19] In consideration of the *Gattellaro* factors and in the interests of justice, the Tribunal refuses an extension of time to appeal pursuant to subsection 52(2) of the DESD Act.

[20] The Tribunal is satisfied that the Appellant does not have an arguable case and in the present matter this factor heavily weighs in favour of not allowing an extension of time to file the appeal.

Adam Picotte

Member, General Division - Income Security