



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *A. J. v. Minister of Employment and Social Development*, 2016 SSTADIS 181

Tribunal File Number: AD-16-151

BETWEEN:

A. J.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Hazelyn Ross

DATE OF DECISION: May 24, 2016

DECISION

[1] The Appeal Division of the Social Security Tribunal of Canada, (the Tribunal), dismisses the appeal.

INTRODUCTION

[2] The Appellant applied for a Division of Undivided Pension Credits, (DUPE), pursuant to section 55.1 of the *Canada Pension Plan*, (CPP). The Respondent denied her application and upheld its decision on reconsideration. The Appellant appealed the reconsideration decision to the General Division of the Tribunal, which dismissed her appeal summarily. The Appellant now appeals from the General Division decision.

GROUND OF THE APPEAL

[3] The Appellant seeks to appeal the decision on the basis that she did not understand the basis of the General Division decision to summarily dismiss her appeal. The Appellant also requested proof that she had been sent letters advising her of the process for the DUPE or credit split.

ISSUE

[4] The only issue before the Appeal Division is:
- Did the General Division err in summarily dismissing the Appellant's appeal?

THE GOVERNING STATUTORY PROVISIONS

[5] Subsection 53(1) of the *Department of Employment and Social Development*, (DESD), *Act* governs "summary dismissal" of appeals. The subsection, 53 (1), provides that "the General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

- [6] The grounds of appeal are set out in subsection 58(1) of the DESD Act, namely:-
- a. The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
 - b. The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
 - c. The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[7] Section 55.1 of the CPP, which governs the DUPE, provides that former common-law spouses have up to four years following the separation to apply for a DUPE. The section states:-

55.1(1) subject to this section and sections 55.2 and 55.3 a division of unadjusted pensionable earnings shall take place in the following circumstances:

- (c) In the case of common-law partners, following the approval by the Minister of an application made by or on behalf of either former common-law partner, by the estate or succession of one of those former common-law partner or by any person that may be prescribed, if
 - (i) the former common-law partners have been living separate and apart for a period of one year or more, or one of the former common-law partners has died during that period, and
 - (ii) the application is made within four years after the day on which the former common-law partners commenced to live separate and apart or, if both former common-law partners agree in writing, at any time after the end of that four-year period.

SUBMISSIONS

[8] The Appellant's only submissions were contained in her notice of appeal. (AD1-1). In the notice of appeal, she offered explanations for her failure to make the request for a DUPE in a timely fashion as well as reasons why she could and would not seek a waiver from her former common-law partner. As well, the Appellant sought to obtain from the Tribunal proof that it had sent her letters informing her of the process for applying for a DUPE.

[9] Counsel for the Respondent submitted that the General Division had stated and properly applied the correct legal provision to the circumstances of the Appellant's case. She argued that based on the law, the appeal had no reasonable chance of success and the General Division decision to dismiss the appeal summarily was proper.

ANALYSIS

[10] The facts of the Appellant's case are not in dispute. She had been in a common-law relationship for some ten years prior to it ending either in 1999 or 2000. However, the Appellant did not apply for a DUPE until 2013. Whether or not the relationship ended in 1999 or 2000, the four-year statutory period mandated by section 55.1 of the CPP had long since expired by the time the Appellant applied for a DUPE.

[11] The Appeal Division concurs in the submission of Counsel for the Respondent that the General Division had identified the appropriate legal provision, namely, paragraph 55.1 (c)(ii) of the CPP and had properly applied the statutory provision to the Appellant's case. By this statutory provision, the Appellant was required either to have made the application for the DUPE within four years of the cessation of her common-law relationship, namely by 2003 or 2004 or to have the written consent of her former common-law spouse. Neither situation obtains in the Appellant's case. Accordingly, the General Division did not err when it found that the Appellant did not qualify for an income split i.e. DUPE.

[12] The Appellant pled that her separation from her former common-law spouse was acrimonious and that the circumstances of the separation are such that she is unwilling to contact him. Unfortunate as the Appellant's circumstances may be, they are not relevant to a determination of whether or not she qualifies for a DUPE. As stated above, the four-year period having passed, there is only one way by which the Appellant can benefit from a DUPE and that is with the consent of her former common-law spouse.

[13] Subsection 53(1) of the DESD Act mandates the General Division to summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success. In the context of summary dismissal the Appeal Division has taken the position that where the facts of the case are not in dispute; the law is clear; and where applying the law to the facts of the case there is only one outcome that is not in an appellant's favour, then this would be a case where it would be appropriate to apply the summary dismissal provision in subsection 53(1) of the DESD

Act. The Appeal Division finds that this is such a case. The Appeal Division also finds that the General Division did not err in its decision to dismiss the Appellant's appeal summarily.

CONCLUSION

[14] The appeal is dismissed.

Hazelyn Ross
Member, Appeal Division