



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *K. V. v. Minister of Employment and Social Development*, 2016 SSTADIS 188

Tribunal File Number: AD-15-1001

BETWEEN:

K. V.

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 26, 2016

DECISION

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

INTRODUCTION

[2] The Appellant is in receipt of a *Canada Pension Plan*, (CPP), retirement pension. However, he is dissatisfied with the amount of pension he receives. He submits that even though the Respondent increased the amount of the benefit to which he is entitled based on additional information that it obtained from the Canada Revenue Agency, he should be awarded a greater payment. He stated that the CPP records omit some ten years of valid contribution from its calculation of his entitlement. The Respondent maintains that the Appellant's retirement pension was based on the records of the Canada Revenue Agency and thus, the amount of pension to which he was entitled was correctly calculated.

[3] After providing the parties with an opportunity to make submissions as provided for by section 22 of the *Social Security Tribunal Regulations* SOR/2013-60, on October 30, 2015 the General Division dismissed the appeal summarily. In dismissing the appeal, the General Division stated that:-

[28] While the Tribunal has jurisdiction to determine whether the amount of a benefit payable to a person under the CPP has been correctly calculated, in so doing the Tribunal must rely on the Statement of CPP Contributions filed. In this appeal, the Appellant has not argues that the Respondent erred in the calculation of his CPP retirement pension. Instead, his argument is that the CPP contributions, upon which the calculation is based, is not accurate. As stated previously, the Tribunal does not have the jurisdiction to amend a contributor's statement of CPP contributions."

[4] The Appellant now appeals from the General Division decision.

GROUND OF THE APPEAL

[5] As grounds of the appeal, the Appellant submitted that the General Division failed to observe a principle of natural justice; and based its decision on erroneous findings of fact that it made in a perverse or capricious manner.

ISSUE

[6] The only issue before the Appeal Division is:-

Did the General Division err in summarily dismissing the Appellant's appeal?

THE GOVERNING STATUTORY PROVISIONS

[7] 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.

[8] 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.

[9] Section 46 of the CPP sets out how the amount of retirement pension is to be calculated. Ordinarily, the retirement pension that is payable to a contributor is a basic amount equal to twenty-five per cent of his average monthly pensionable earnings.

SUBMISSIONS

[10] The Appellant made several submissions in relation to errors that he perceived the General Division to have made. Essentially, these submissions relate to a failure to act in accordance with a declaration by a former Canadian Prime Minister; a failure to provide advice; and a misapprehension of what transpired between him and the Respondent. The Appellant also sought to provide additional documents.

[11] Counsel for the Respondent submitted that the General Division reached a decision that was both correct in law and proper in its outcome. She argued that the General Division lacked

jurisdiction amend the Appellant's CPP record. In support of her position, Counsel for the Respondent submitted that:-

“the applicable provisions governing employee and employer contributions, including self-employment, are found in Part I of the *Canada Pension Plan*, this includes all matters relating to CPP contributions in sections 5 to 43 of the *Plan*. Part I of the *Plan*, is in the sole authority of the Minister of National Revenue, who is also responsible for the *Income Tax Act*, pursuant to section 5 of the CPP.” (AD2-1)

[12] Counsel for the Respondent went on to argue that “any remedy with respect to whether or not CPP contributions were credited to him during the contested years lies with the Minister of National Revenue through the Canadian Revenue Agency.” She made the further argument that the errors raised by the Appellant in his submission do not relate to grounds of appeal under subsection 58(1) of the DESD Act.

ANALYSIS

[13] The Appellant submitted that the General Division breached a principle of natural justice by failing to inform him that he was “correct and that he could apply at age 70 or older for OAS or 10 months later than he did and that would qualify him for an increase of 36% in his pension benefits.”

[14] The Appeal Division finds that informing appellants of their rights under the CPP is not within the purview of the Tribunal. The *raison d'être* of the Tribunal is decision-making. At the General Division it is to hear appeals from reconsideration decisions of the Respondent in certain prescribed cases. Therefore, it cannot be a breach of natural justice for the General Division not to do something it was neither intended nor set up to do. Furthermore, failing to inform an appellant of his rights under the CPP is not a ground of appeal under subsection 58(1) of the DESD Act. Leave to appeal cannot be granted on this basis.

[15] The Appellant made the further submission that the General Division based its decision on incorrect information or on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it, namely:

“to an announcement made by Mr. Harper during the World Economic Council the same year the appellant applied for OAS which changed the age requirements for OAS would have given the appellant the choice to refund payments made to the date the age requirements became law and reapply for OAS with increased benefits.” (typed as written)

[16] This submission is in the same vein as the prior one. The Appeal Division finds that it also does not point to an error on the part of the General Division that could give rise to a ground of appeal that would have a reasonable chance of success. The Tribunal is not set up to give advice but to render decisions on appeals.

[17] The Appeal Division comes to a similar conclusion regarding the alleged failure of the General Division to advise the Appellant of a change in the CPP.

[18] The Appellant also submitted that the General Division made an incorrect statement when it stated at page 2 of its decision that the “the Respondent reconsidered and decided to maintain the original date of September 2010. (AD1B-1 point 4) the Appeal Division is unable to locate this statement in the General Division decision. What the decision does state is:-

“...The Respondent reconsidered the Appellant’s application and in so doing was able to increase the amount of the Appellant’s pension based on additional years of contributions that were confirmed by the Canada Revenue Agency.” (AD1D-2)

[19] The Appeal Division finds that no ground of appeal is disclosed by this submission. Furthermore, even if the General Division had erred as the Appellant alleged the Appeal Division finds that the error would not have been one that was so material that it could or would change the decision. This is so because the essence of the General Division decision is the lack of its jurisdiction to amend the CPP record. As submitted by Counsel for the Respondent, the only body with the requisite authority to amend the Appellant’s CPP record is the Canada Revenue Agency.

CONCLUSION

[20] 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 matters raised by the Appellant can be rectified only as between him and the Canada Revenue Agency. Accordingly, the Appeal Division finds that the General Division did not err in its decision to dismiss the Appellant's appeal summarily.

[21] The appeal is dismissed.

Hazelyn Ross
Member, Appeal Division