



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. P. v. Minister of Employment and Social Development*, 2016 SSTGDIS 89

Tribunal File Number: GP-15-1137

BETWEEN:

F. P.

Appellant

and

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

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Angela Ryan Bourgeois

HEARD BY: Questions and Answers

DATE OF DECISION: November 1, 2016

REASONS AND DECISION

INTRODUCTION

[1] The Appellant has been receiving a *Canada Pension Plan* (CPP) retirement benefit since March 2009.

[2] In October 2014 the Respondent recalculated the Appellant's CPP retirement benefit based on new earnings information provided to the Respondent by Canada Revenue Agency (CRA). The recalculation resulted in an overpayment and a reduction in the Appellant's monthly retirement benefit.

[3] The Appellant asked the Respondent to reconsider the overpayment and reduction of his monthly retirement benefit. The Respondent maintained its decision in a letter dated February 27, 2015.

[4] The Appellant has appealed the Respondent's reconsideration decision to the Social Security Tribunal (Tribunal).

[5] The Tribunal decided to have a hearing by way of written questions and answers because credibility is not a prevailing issue and there was a need for clarification that could be appropriately addressed by this form of hearing.

PRELIMINARY MATTERS

[6] By letter dated June 21, 2016 the Tribunal Member notified the parties that she would accept submissions with respect to the application of section 97 of the CPP. No related submissions were received.

[7] Having received no submissions on section 97 of the CPP, the Tribunal proceeded by way of questions and answers, the details of which are set out below. The deadline for the written answers was September 2, 2016.

[8] On September 14, 2016 the Respondent requested an extension of time to file its answers to the questions posed and filed its answers on September 15, 2016.

[9] The Tribunal decided to accept the late answers because they were relevant. The Appellant was allowed until October 16, 2016 to file a response, if any. As October 16, 2016 was a Sunday, the Tribunal waited until October 17, 2016 for a response. No response was received from the Appellant.

THE LAW

[10] Section 96 of the CPP provides that every contributor may require the Respondent to furnish or make available to them a statement of the unadjusted pensionable earnings shown to that contributor's account in the Record of Earnings, and if the contributor is not satisfied with the statement they may request that it be reconsidered by the Respondent.

[11] Subsection 97(4) of the CPP provides that whenever any reduction is made in the amount of the unadjusted pensionable earnings of a contributor shown to their account in the Record of Earnings and it appears from the Record of Earnings that before the making of the reduction the contributor had been informed under section 96 of the amount of the earnings shown to their account in the Record of Earnings, the Respondent must notify the contributor in prescribed manner of his or her action and if the contributor is not satisfied with the amount of the reduction so made, the contributor may request that such action be reconsidered by the Minister. Sections 81 and 82 apply with any modifications as required by the circumstances.

[12] Section 40 of the *Canada Pension Plan Regulations* provides that where a contributor is required to be notified of a reduction in the amount of the unadjusted pensionable earnings shown to the account of the contributor pursuant to subsection 97(4) of the CPP, the contributor shall be notified in writing of the reduction addressed to the contributor at his last known address.

ISSUE

[13] The Tribunal must determine the amount of the Appellant's retirement benefit.

EVIDENCE

[14] The Appellant received a Statement of Contributions from the Respondent dated October 2008. (GD1-17)

[15] The statement shows the following:

- a) Pensionable earnings in 2005 as \$27,250
- b) Pensionable earnings in 2006 as \$27,250
- c) Pensionable earnings in 2007 as \$0.00
- d) A statement that based on his average earnings since age 18 he could receive an early retirement benefit at the age of 60 in the amount of \$162.76

[16] The Appellant applied for a CPP retirement benefit in February 2009. His application was approved effective March 2009.

[17] According to the Respondent's submissions the Appellant's monthly retirement benefit beginning in March 2009 was \$166.04, which the Respondent indicates was calculated using the earnings and contributions the Respondent had at that time from CRA.

[18] In October 2014 the Respondent recalculated the amount of the Appellant's retirement benefit based on changes to the Appellant's undivided pensionable earnings (UPE) that were posted by CRA on March 22, 2010 (GD4-6 and 7). This resulted in a reduction of the Appellant's monthly retirement benefit and a claimed overpayment of \$829.02 from March 2009 (when he started to receive the pension) until it was recalculated in October 2014.

[19] The Earnings Details document at GD4-6 and 7 shows that CRA posted changes to the Appellant's earnings in 2008 and 2010. With respect to the Appellant's 2005 earnings, the earnings were originally posted as \$8,000, were increased to \$27,250 in August 2008 and were reduced back to \$8,000 again in March 2010. With respect to the Appellant's 2006 earnings, they were originally posted as \$9,402 in January 2008, were increased to \$27,250 in August 2008 and were reduced to the original amount of \$9,402 in March 2010. The print out shows no changes by CRA to the Appellant's 2005 and 2006 earnings since March 2010.

Year	Original posting	Change in August 2008	Change in March 2010
2005	\$8,000	\$27,250	\$8,000
2006	\$9,402	\$27,250	\$9,402

[20] The Appellant's Contributions printed on February 7, 2015 is found at GD2-6 and 7. This statement shows the Appellant's UPE as:

2005	\$8,000
2006	\$9,402

[21] An excerpt from the Respondent's October 2014 letter to the Appellant reads:

We are writing to you about *changes to your Canada Pension Plan retirement pension.*

...

We have *recently received* information from the Canada Revenue Agency showing that your earnings were lower than our file originally indicated. Due to this change, we have recalculated the amount of your benefit.

As of March 2009, we have reduced the monthly amount of your retirement pension from \$166.04 to \$154.28. Your new monthly rate for 2014 is \$166.33 plus a PRB payment of \$16.02 per month.

As a result of this change, we overpaid you by \$ 829.02 for the period of May 2009 to October 2010 [sic]. We will recover this amount by deduction \$ 40.00 from your monthly payment starting in January 2015, until the full amount has been paid back.

[Italics mine]

[22] The Appellant requested a reconsideration of the Respondent's decision relating to the overpayment and the reduction of the amount of his retirement benefit.

[23] The Respondent maintained its initial decision. The reconsideration decision is dated February 27, 2015 and reads in part as follows:

We are writing to you concerning your *request to reconsider the overpayment* on your account due to a revision of earnings form [sic] the Canada Revenue Agency (CRA).

Your CPP retirement pension is based on how long and how much you contribute to the Canada Pension Plan at the date of your application. Your contributions are calculated using your employee and/or employer deductions as reported to us by the Canada Revenue agency once you file your taxes.

When you applied for this benefit, we advised you that you were being paid on interim earnings as reported to the Canada Revenue Agency.

CRA has advised us, through your record of earnings that the amount used to calculate your original CPP retirement benefit has changed. *Therefore we have adjusted your benefit accordingly.*

The following shows the *amendment to your pensionable earnings*:

YEAR	OLD PENSIONABLE EARNINGS	NEW PENSIONABLE EARNINGS <i>(received)</i>
<u>2005</u>	\$ <u>27250</u>	\$8000
<u>2006</u>	\$27250	\$9402

As a result of this change, we overpaid you by \$ 829.02 for the period of March 2009 (the effective date of your retirement benefit) to October 2014.

Including the increase due to the cost of living, you are currently receiving a monthly retirement entitlement of \$169.32 and a post-retirement benefit amount of \$16.30 for a total amount of \$185.62 per month.

If you disagree with the decision

You have the *right to appeal this decision to the Social Security Tribunal – General Division, Income Security Section*

[Italics mine]

Questions and Answers

[24] The Tribunal posed the following questions to the Respondent by Notice of Hearing dated August 3, 2016:

1. Please advise whether the Appellant was given notice of the reductions in the amounts of his unadjusted pensionable earnings pursuant to subsection 97(4) of the Canada Pension Plan.
 - a. If notice was given, please provide evidence of the notice given with details.
 - b. If notice was not given, please explain why.
2. Please provide any submissions you wish to make on the impact of your answer to number 1 with respect to the within appeal.

[25] The Respondent replied as follows:

1. The Appellant was given notice of the reductions in the amounts of his unadjusted pensionable earnings pursuant to subsection 97(4) of the Canada Pension Plan with a letter dated October 16, 2014 and with a second letter dated February 27, 2015 (see copy of letters attached).
2. See attached letters.

SUBMISSIONS

[26] The Appellant submitted that he should be entitled to continue with the higher retirement benefit based on his 2008 statement of contributions and that he should not have to repay the claimed overpayment because he states that the error was an administrative error on the part of the Respondent and he should not be responsible for something the Respondent did in 2008.

[27] The Appellant also claims the *Crown Liability and Proceedings Act* sets a limitation of six years on the collection of debts.

[28] The Respondent submitted that the Appellant's appeal should be dismissed because a retirement benefit must be calculated used the current record of earnings information that is posted by CRA. Because the Statement of Contributions from October 2008 does not accurately reflect the correct information for 2005, 2006 and 2007 it cannot be used and further the Appellant would have been aware of the error in 2008.

[29] The Respondent submitted that because of the overpayment, pursuant to subsection 66(2) of the CPP the Appellant is indebted to Her Majesty and the debt is recoverable at any time.

ANALYSIS

[30] The Respondent recalculated the Appellant's retirement benefit based on a reduction made to the amount of his UPE. In order to determine the amount of the retirement benefit the Appellant is entitled to receive, the Tribunal must be satisfied that the Appellant's UPE was reduced in accordance with the provisions of the CPP.

[31] Subsection 97(4) of the CPP requires the Respondent to give the Appellant notice of a reduction in his UPE *if* the Appellant has been notified of his earlier UPE under section 96 of the CPP. Section 96 of the CPP states that when requested to do so, the Respondent must furnish or make available to the Appellant a statement of his UPE.

[32] The evidence on record is unclear as to whether the Appellant requested a statement of his UPE pursuant to section 96 of the CPP. When asked by the Tribunal whether notice had been given to the Appellant under subsection 97(4) of the CPP, and if not, why, the Respondent indicated that notice had been given. The Respondent did not indicate that the notice provision was not triggered because the Appellant had not been informed of the amount of his UPE pursuant to section 96 of the CPP. This suggests that the Respondent agrees that section 97(4) of the CPP was triggered and that the Appellant had been informed under section 96 of the CPP of the amount of his UPE in the Record of Earnings, presumably by the statement of contributions dated October 2008 (GD1-17).

[33] The Tribunal finds that the Appellant was notified of his earlier UPE pursuant to section 96 of the CPP.

[34] Because subsection 97(4) of the CPP was triggered the Respondent was required to give the Appellant notice of the reduction in the amount of his UPE in the Record of Earnings. Once notified, if the Appellant was not satisfied with the amount of the reduction he was permitted to request a reconsideration in accordance with sections 81 and 82 of the CPP.

[35] The Respondent indicates that the October 2014 and February 2015 letters provided the Appellant with notice pursuant to subsection 97(4) of the CPP. The Tribunal does not agree.

[36] The October 2014 letter does not constitute notice under subsection 97(4) of the CPP because it does not indicate the amount of the reduction in the Appellant's UPE. A notice under subsection 97(4) contemplates a notice to the contributor of the *amount of the reduction* in his UPE. Without this information, a contributor would not know if he was satisfied with the reduction and would have no information upon which to base a decision on whether to request a reconsideration or not. The purpose of the October 2014 letter was not to provide notice pursuant to subsection 97(4) but was to deal with changes to the Appellant's retirement benefit. This is clearly set out in the introductory paragraph to the letter which reads "we are writing to you *about changes to your Canada Pension Plan retirement pension*" [italics mine].

[37] The February 2015 letter does not constitute notice under subsection 97(4) of the CPP because the primary purpose, as disclosed in the introductory paragraph, is to deal with the overpayment that resulted from the revision of earnings, not the revision of earnings. A notice under subsection 97(4) cannot be clothed as a reconsideration decision on a different matter. In this case, the letter the Respondent claims is notice under subsection 97(4) of the CPP is a reconsideration decision that relates to the reduction in the Appellant's retirement benefit and a resulting overpayment. In reading this letter, which states that the Appellant has a right to appeal the Respondent's decision to the Social Security Tribunal, it cannot reasonably be concluded that this letter gives notice of the reduction in the Appellant's UPE for which he could request a reconsideration from the Respondent. The information relating to the Appellant's UPE in this letter was provided solely to explain the reduction in the Appellant's retirement benefit, not to give notice of the reduction in the UPE itself.

[38] Subsection 97(4) of the CPP and section 40 of the CPP Regulations specifically require that the Appellant be given notice of the Respondent's action of reducing the Appellant's UPE shown on his record of earnings. The February 2015 letter simply does not

provide notice of the reduction in a way that someone could reasonably conclude that the letter constitutes notice of the Minister's action of reducing the Appellant's UPE.

[39] It is for these reasons, that although the February 2015 letter sets out the amount of the reduction in the Appellant's UPE, the letter does not constitute notice pursuant to subsection 97(4) of the CPP.

[40] Because the Appellant was not given notice pursuant to subsection 97(4) of the CPP of the amount of the reduction in his UPE and was therefore not given an opportunity to request a reconsideration of the reduction in his UPE, the Tribunal finds that the Respondent's recalculation of the amount of the Appellant's retirement benefit as it relates to the reduction of the 2005 and 2006 earnings was unjustified. To find that the Appellant is bound to a reduction in his retirement benefit based on a reduction in his UPE where he was not provided the legislated notice under subsection 97(4) of the CPP would result in an absurdity.

[41] The Tribunal notes the Respondent's submission that the Appellant should have been aware of the error in 2008. The notice requirement under subsection 97(4) of the CPP does not hinge on whether the Appellant was aware of the error. The Respondent reduced the Appellant's UPE and the Appellant was entitled to receive notice of the reduction. As stated above, to allow a recalculation of the Appellant's retirement benefit based on a reduction to the amount of his UPE without proper notice and an opportunity to request reconsideration would be unfair and is contrary to the provisions of the CPP.

[42] The Tribunal has considered the Appellant's submission with respect to the *Crown Liability and Proceedings Act* and finds that this Act does not apply.

CONCLUSION

[43] For the reasons set out above, the Tribunal finds that the Appellant is entitled to a retirement benefit based on earnings of \$27,250 for each of 2005 and 2006.

[44] The appeal is allowed.

Angela Ryan Bourgeois
Member, General Division - Income Security