



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *F. S. v Minister of Employment and Social Development*, 2017 SSTGDIS 212

Tribunal File Number: GP-17-63

BETWEEN:

F. S.

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: Raymond Raphael

DATE OF DECISION: April 16, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for the CPP death benefit in relation to the late R. S. (the deceased contributor). The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration to the Social Security Tribunal (Tribunal) on January 3, 2017.

ISSUE

[2] The Tribunal must decide whether the appeal should be summarily dismissed.

THE LAW

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success.

[4] Section 22 of the *Social Security Tribunal Regulations* (SST Regulations) states that before summarily dismissing an appeal, the General Division must give notice in writing to the Appellant and allow the Appellant a reasonable period of time to make submissions.

Applicable CPP provisions

[5] Paragraph 44(1)(c) of the CPP provides that a death benefit shall be payable to the estate of a deceased contributor who has made contributions for not less than the minimum qualifying period.

[6] Paragraph 44(3) of the CPP provides that for the purposes of paragraph 44(1)(c) a contributor shall be considered to have made contributions for not less than the minimum qualifying period only if the contributor has made contributions during the contributor's contributory period

- a) for at least one-third of the total number of years included 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 equal to or less than the basic exemption for that year, but in no case for less than three years; or

b) for at least ten years.

[7] Paragraph 49 of the CPP provides that a contributor's contributory period is the period commencing January 1, 1966 or when he reaches eighteen years of age, whichever is later, and ending in the month when the contributor dies, excluding any month that was excluded from the contributor's contributory period under the Act or under a provincial pension plan by reason of disability.

UNDISPUTED FACTS

[8] The deceased contributor was born in January 1965 and died on July 14, 2006. The Record of Contributions [GD2-13] for the deceased contributor indicates valid contributions only for the years 2011 to 2015, a total of five years.

SUBMISSIONS

[9] The Appellant submitted that:

- a) The deceased contributor worked in Iran since he graduated from university in 1990 and contributed to the pension plan in Iran until 2008, when they moved to Canada;
- b) He contributed to the CPP while he worked in Canada;

[10] The Respondent submitted that:

- a) The Appellant cannot receive the death benefit because the deceased contributor did not satisfy the minimum contributory requirements since he only made CPP contributions for five years, and ten years are required;
- b) The Tribunal is bound by the language of the *CPP* and does not have the authority to vary legal requirements set out in the legislation;

- c) Since the *CPP* legislation governs the minimum contributory requirements that must be met in order to allow payment of the requested benefit, the Tribunal does not have the authority to override the statutory requirements.

ANALYSIS

[11] In compliance with section 22 of the SST Regulations, the Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions. The Appellant did not respond to this notice.

[12] Pursuant to the provisions of s.44 and s.49 of the CPP as set out above, the deceased contributor's contributory period for the purposes of calculating the MQP extends from February 1983 (the month after he turned eighteen) until July 14, 2016 (when died). This is a period of 34 years and in order for the Appellant to qualify for the death benefit the deceased contributor must have contributed for at least 10 years. The Record of Earnings indicates valid earnings for only five years.

[13] 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.

[14] Accordingly, the Tribunal finds that the appeal has no reasonable chance of success.

CONCLUSION

[15] The appeal is summarily dismissed.

Raymond Raphael
Member, General Division - Income Security