



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. D. v. Minister of Employment and Social Development*, 2017 SSTGDIS 53

Tribunal File Number: GP-16-4175

BETWEEN:

D. D.

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: John F. L. Rose

DATE OF DECISION: May 10, 2017

REASONS AND DECISION

INTRODUCTION

[1] The Appellant applied for a Canada Pension Plan (CPP) Credit Split. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Tribunal on November 23, 2016.

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.

[5] Subsection 55(1) of the *Canada Pension Plan* allows for a Division of Unadjusted Pensionable Earnings (DUPE) within 36 months of a judgment granting a divorce or of a judgment of nullity of marriage after January 1, 1978 and before January 1, 1987. It stipulates that the 36 month period could be waived upon agreement of the parties in writing.

EVIDENCE

[6] The Appellant completed the application for Canada Pension Plan Credit Splitting, also known as DUPE, on July 16, 2015 and reported that she and the Appellant had been married on May 9, 1970, had last lived together on August 28, 1977 and that the marriage ended on March 30, 1979.

[7] A copy of the Marriage Certificate was filed along with the Decree Absolute which ordered that the divorce became effective on April 2, 1980.

SUBMISSIONS

[8] The Appellant submitted that:

- a) During the marriage she was a stay at home mom and did not work;
- b) The parties were divorced in November 1979;
- c) Her former spouse died in 2011 before being able to use his credits; and
- d) She felt that she was therefore entitled to receive the credit splitting.

[9] The Respondent submitted that:

- a) The Appellant was divorced on April 2, 1980;
- b) Pursuant to section 55 of the CPP, the application for credit split must have been made within 36 months of that date unless an agreement in writing stated otherwise;
- c) The application for credit split was not made until after the 36 month period; and
- d) There is no agreement between the parties to waive that period and as the Appellant's former spouse has died, it is not possible for them to enter into such an agreement.

ANALYSIS

[10] 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. No further submissions were received.

[11] The DUPE provisions of the CPP allow former spouses to share equally in the pension credits earned by each of them during the course of their marriage. Under subsection 55(1) the split was not mandatory. It provided that the application for the split must be made within 36 months of the date of the granting of the judgment for divorce or of a judgment of nullity of the

marriage. To apply, the judgment must have been rendered on or after January 1, 1978 and before January 1, 1987. In the present case, Section 55 is clearly applicable as the Appellant and her former spouse were divorced on April 2, 1980.

[12] Section 55(1) also allows the parties to waive the 36 month period by agreement in writing. In this case there was no such agreement in writing before the Tribunal. In *Harrison-Wilson v. MSD* (April 14, 2005), CP 22023, the Pension Appeals Board determined that a waiver signed by the administrator of a deceased estate was inoperative where it was granted more than 36 months after the spouses were divorced. As the Appellant's former spouse has died, it is not possible now for them to enter into such an agreement and waive the 36 month requirement.

[13] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the CPP and cannot consider extenuating circumstances in order to allow the 36 month limitation period to be waived.

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

CONCLUSION

[15] The appeal is summarily dismissed.

John F. L. Rose
Member, General Division - Income Security