Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *R. T. v. Minister of Employment and Social Development*, 2017 SSTADIS 348

Tribunal File Number: AD-16-1090

BETWEEN:

R. T.

Appellant

and

Minister of Employment and Social Development

Respondent

and

V. T.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Meredith Porter

DATE OF DECISION: July 19, 2017

Canada

REASONS AND DECISION

INTRODUCTION

[1] The Appellant is appealing a decision of the General Division of the Social Security Tribunal of Canada (Tribunal) dated May 5, 2016, to summarily dismiss the Appellant's appeal of the Respondent's decision not to reverse a credit splitting pursuant to section 55.1 of the *Canada Pension Plan* (CPP).

[2] An application for leave to appeal the General Division decision was filed with the Tribunal's Appeal Division on August 26, 2016.

[3] This appeal proceeded on the record for the following reasons:

a) Pursuant to subsection 37(a) of the *Social Security Tribunal Regulations*, the Member has determined that no further hearing is required.

b) The requirements under the *Social Security Tribunal Regulations* to proceed as informally and as quickly as circumstances, fairness and natural justice permit.

ISSUE

[4] Did the General Division err in summarily dismissing the Appellant's appeal on the basis that it had no reasonable chance of success?

THE LAW

[5] According to subsection 58(1) of the *Department of Employment and Social Development Act* (DESD Act) the only grounds of appeal are the following:

c) the General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;

d) the General Division erred in law in making its decision, whether or not the error appears on the face of the record; or

e) 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.

[6] Paragraph 52(1)(*b*) and subsection 52(2) of the DESD Act refer to the time limit for appeals before the Tribunal's General Division:

> 52 (1) An appeal of a decision must be brought to the General Division in the prescribed form and manner and within,
>
> (b) in any other case, 90 days after the day on which the decision is communicated to the appellant.
>
> Extension
>
> (2) The General Division may allow further time within which an appeal may be brought, but in no case may an appeal be brought more than one year after the day on which the decision is communicated to the appellant.

[7] Subsection 53(1) of the DESD Act provides that:

> The General Division must summarily dismiss an appeal if it is satisfied that it has no reasonable chance of success.

SUBMISSIONS

[8] The Appellant submits that the General Division based its decision to summarily dismiss the appeal on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. The Appellant argues that the General Division ought to have considered that the Added Party was both a poor parent and an unfaithful partner.

[9] The Respondent did not file any submissions, nor did the Added Party.

ANALYSIS

[10] This is an appeal of the General Division's decision not to reverse a credit splitting between the Appellant and the Added Party pursuant to subparagraph 55.1(1)(*b*)(i) of the CPP. Subparagraph 55.1(1)(*b*)(i) pertains to the mandatory division of unadjusted pensionable earnings upon a married couple's separation, on application to the Minister, once they have lived separate and apart for at least one year. The sections read as follows:

> 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:
>
> (b) in the case of spouses, following the approval by the Minister of an application made by or on behalf of either spouse, by the estate or succession of either spouse or by any person that may be prescribed, if
>
> (i) the spouses have been living separate and apart for a period of one year or more.

[11] The above provisions allow one or both spouses to apply to the Minister for a division of unadjusted pensionable earnings once the couple has been living separate and apart for at least one year. I note that the Minister has the discretion to refuse the application under certain circumstances. These circumstances are set out in subsection 55.1(5) and include that the Minister must be satisfied that a) both parties are entitled to benefits; and, b) the amount of both benefits would decrease upon division or when the division was proposed to be made.

[12] In this case, the Appellant had requested that the Minister exercise discretion and reverse the credit splitting on the grounds that the Added Party, his former spouse, was an inadequate mother and an unfaithful partner. The Appellant also argues that he suffered financial hardship as a result of the credit splitting with his former wife. Essentially, it was his assertion that the credit splitting would result in patently unfair circumstances.

[13] A letter dated September 30, 2015, explained the calculation of the Appellant's credit splitting with respect to paragraph 78.1 of the CPP Regulations, which pertain to determining the period of the parties' cohabitation . The letter reads, in part, as follows:

> The information in your file shows you and [the added party] started living together on January 1, 1973, married on February 12, 1974 and separated on September 15, 1996. Therefore, we must maintain our decision to split your pension credits for the period of January 1973 to December 1995.
>
> As a result, we have determined that the decision to split your pension credits for the period of January 1973 to December 1995 was completed in good faith and with due consideration to the Canada Pension Plan legislation.

[17] As set out in paragraph 7 above, the General Division is required to summarily dismiss an appeal where there is no reasonable chance of success. A reasonable chance of success has been equated to "an arguable case" (*Fancy v. Canada (Attorney General)*, 2010 FCA 63).

[18] In the matter at hand, the General Division considered all four factors in *Canada (Minister of Human Resources Development) v. Gattellaro*, 2005 FC 883, in the context of the Appellant's late appeal: whether the Applicant had demonstrated a continuing intention to pursue the application or appeal; whether the matter discloses an arguable case; whether there is a reasonable explanation for the delay; and, if in granting an extension prejudice to the other party would result. The General Division found that the Appellant had demonstrated a continuing intention to pursue the appeal, and he had provided a reasonable explanation for the delay. The General Division did not receive any submissions from the Respondent regarding any prejudice that would result should an extension be granted and, in the General Division's opinion, on assessment of the relatively short period of time that had elapsed between the receipt of the reconsideration decision and the filing of the appeal, no prejudice appeared likely to result if an extension was granted. The General Division allowed the extension of time, however, in the interests of justice.

[19] Following consideration of the *Gattellaro* factors, the General Division summarily dismissed the appeal on the grounds that the Appellant had failed to demonstrate that he had an arguable case. The Appellant had not put forward a ground of appeal that had a reasonable chance of success. Whether his former spouse was a good parent or faithful partner is irrelevant. Neither of these facts is a ground on which the Minister can refuse or reverse an application for the division of unadjusted pensionable earnings pursuant to the CPP. In the General Division's decision, at paragraph 10, it finds that "[t]he CPP legislation is clear regarding the credit split upon separation (subparagraph 55.1(1)(*b*)(i))."

[21] On appeal to the Appeal Division, the only grounds of appeal are set out in subsection 58(1) of the DESD Act. On thorough review of the relevant jurisprudence and statutory provisions pertaining to the Appellant's case as discussed in the paragraphs above, the Appeal Division cannot find that the General Division based its decision on an erroneous finding of fact as the Appellant has argued.

CONCLUSION

[22] The appeal is dismissed.

Meredith Porter
Member, Appeal Division