



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *D. D. v. Minister of Employment and Social Development*, 2017 SSTGDIS 127

Tribunal File Number: GP-16-2162

BETWEEN:

D. D.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Patrick O'Neil

DATE OF DECISION: September 8, 2017

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a *Division of Unadjusted Pensionable Earnings* (DUPE) under the *Canada Pension Plan* (CPP). The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on June 22, 2016.

[2] This appeal involves entitlement of former spouses who were divorced during the period on or after January 1, 1978 and before January 1, 1987 to a *Division of Unadjusted Pensionable Earnings* pursuant to Paragraph 55(1) of the CPP.

[3] Paragraph 55(1) of the CPP provides *inter alia* that an application for a division of the unadjusted pensionable earnings of former spouses may be made in writing to the Minister by either former spouse within 36 months or, if both former spouses agree in writing, at any time after the date of a judgement granting a divorce of the marriage, rendered on or after January 1, 1978 and before January 1, 1987.

[4] 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 (*Miter v. Canada (A.G.)*, 2017 FC 262).

[5] The Tribunal has decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[6] The Appellant and A. M. (former spouse) were married to each other on May 10, 1974. A judgment absolute granting a divorce of the marriage was rendered on May 23, 1984.

[7] The Appellant's Application for a *Division of Unadjusted Pensionable Earnings* (DUPE application) was received by the Respondent on January 20, 2015.

[8] The Appellant declared in her application that she and her former spouse have not entered into a written agreement concerning a division of pension credits.

SUBMISSIONS

[9] 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 as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations). The Appellant's response dated August 10, 2017, to the notice was received by the Tribunal by the deadline indicated in the notice. The Appellant noted her former spouse and her were not aware of any law regarding spouses splitting CPP pension credits. She acknowledged there is no agreement in writing of her and her former spouse for a division of unadjusted pensionable earnings. She submitted her former spouse gave her permission to apply for his pension, not splitting, before he died.

[10] The Appellant submitted that she is entitled to a division of unadjusted pensionable earnings, as she and her former spouse were married to each other from May 10, 1974, until May 23, 1984. The Appellant submitted that she did not apply for a *Division of Unadjusted Pensionable Earnings* earlier as she was not aware of the benefit, and had no knowledge of time lines of when to apply.

[11] The Respondent submitted that the Appellant is not entitled to a division of unadjusted pensionable earnings, as the Appellant's DUPE application was received by the Respondent more than 36 months after the day the Appellant and her former spouse were divorced, and the Appellant and her former spouse have not both agreed in writing to a division of unadjusted pensionable earnings.

ANALYSIS

[12] The Tribunal is created by legislation and, as such, it only has the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as set out in the CPP. The Tribunal cannot use the principles of fairness or equity or consider extenuating circumstances to allow an application for a division of unadjusted pensionable earnings of former spouses other than as prescribed by the CPP.

[13] Paragraph 55(1) of the *Canada Pension Act* (CPP) provides inter alia that an application for a division of the unadjusted pensionable earnings of former spouses may be made in writing to the Minister by either former spouse within 36 months or, if both former spouses agree in writing, at any time after the date of a judgement granting a divorce of the marriage, rendered on or after January 1, 1978 and before January 1, 1987.

[14] The Appellant and A. M. (former spouse) were married to each other on May 10, 1974. A judgment granting a divorce of the marriage was rendered on May 23, 1984.

[15] The Appellant's Application for a *Division of Unadjusted Pensionable Earnings* was received by the Respondent on January 26, 2015, being more than 30 years after she and her former spouse were divorced.

[16] The Appellant's application was not made within 36 months of the date of the judgement absolute granting a divorce of the marriage of the Appellant and her former spouse, and the Appellant and her former spouse have not both agreed in writing to a division of unadjusted pensionable earnings.

[17] The Tribunal finds the Appellant is not entitled to a division of unadjusted pensionable earnings.

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

CONCLUSION

[19] The appeal is summarily dismissed.

Patrick O'Neil
Member, General Division - Income Security