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

Citation: *E. G. v. Minister of Employment and Social Development*, 2017 SSTGDIS 129

Tribunal File Number: GP-16-1542

BETWEEN:

E. G.

Appellant

and

Minister of Employment and Social Development

Respondent

and

M. M.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: John F. L. Rose

DATE OF DECISION: September 13, 2017

Canada

REASONS AND DECISION

OVERVIEW

[1] The Respondent received an application for a *Canada Pension Plan* (CPP) Credit Split on July 10, 2014 from the Appellant's former spouse, the Added Party. The Respondent allowed the credit splitting, which is also known as a Division of Unadjusted Pensionable Earnings (DUPE), for the period January 1, 1966 to December 31, 1991. The Appellant requested a reconsideration of that decision stating that they separated in August 1990. Up reviewing further evidence, the Respondent amended the period and allowed the credit split from January 1966 to December 1988. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] This appeal was decided on the basis of the documents and submissions filed for the following reasons:

a) The issues under appeal are not complex;

b) There are no gaps in the information in the file or need for clarification;

c) Credibility is not a prevailing issue; and

d) This method of proceeding respects the requirement under the Social Security Tribunal Regulations to proceed as informally and quickly as circumstances, fairness and natural justice permit.

THE LAW

[3] Subsection 55.1(1) of the CPP sets out the eligibility requirements for a DUPE which is mandatory following a divorce and upon the Minister becoming informed of the divorce and prescribed information.

[4] Subsection 55.1(5) of the CPP allows for discretion to deny or cancel a division where the amount of both benefits would be reduced if that division were made. Subsection 55.2(3) of

the same Act allows, under certain conditions, parties to agree in writing that there be no division of pension credits.

[5] Section 55.11 of the CPP makes Section 55.1 applicable to divorces granted after January 1, 1987.

[6] Regulation 78.1 of the CPP regulations establishes the start date as the first month of the year in which the spouse and former spouse were married and excludes the year in which they commenced to live separate and apart.

ISSUE

[7] In this case, the Tribunal must decide if the DUPE was performed in accordance with the applicable sections of the CPP and Regulations.

EVIDENCE

[8] The Added Party completed the Application for Canada Pension Plan Credit Splitting on July 10, 2014 and reported that she and the Appellant had been married on December 22, 1966, had last lived together on January 1, 1993 and were divorced on June 27, 1994. A copy of the Marriage Certificate was filed along with the Certificate of Divorce which confirmed the divorce became effective on June 27, 1994.

[9] The Appellant was asked by CPP if he agreed with those dates and he reported on July 16, 2015 that he did not agree with the separation date which he felt was August 15, 1990. He attached a Custody and Access Report dated June 2, 1997 in which the Added Party had stated that she had left her husband in 1989.

[10] The Appellant provided a Memorandum of Sentence given by Maddison, J. of the Supreme Court of the Yukon Territory on October 24, 1990. The Added Party had been found guilty of an offence against a bank. In the Memorandum, Justice Maddison stated that “She had been married for 24 years, and until two months ago, she had been living with her estranged husband….”

[11] A Lease Agreement between the Added Party as tenant and the X was filed. The lease Agreement was effective August 15, 1990.

[12] In a letter dated October 6, 2015 the Appellant recounts the financial irregularities caused by the Added Party during their marriage including the family finances falling into arrears, an alleged fraudulent signature on a bank account and fraud charges against her.

[13] On November 20, 2015, Service Canada requested additional documentary evidence from the Added Party concerning their cohabitation between 1990 and 1993. The Added Party provided a Statutory Declaration stating that she and the Appellant last lived together on May 2, 1993. She also indicated that during that period she and the Appellant were attending school in different locations but otherwise continued to live together. She maintained that he continued to visit and stay at her home until 2015. A note signed by their son dated December 30, 2015 stated that his parents were never far apart even when he moved with her or she went to school.

[14] A letter dated December 14, 2015 from the lawyer that sold the parties home in Whitehorse in 1990 was filed. The file had been closed on December 20, 1990 and destroyed May 9, 2013.

[15] In her Petition for Divorce issued May 4, 1993, the Added Party claimed that they had been living separate and apart since April 8, 1993. In an affidavit dated October 30, 1995 the Added Party stated that they had separated in 1989. Copies of her 1988 to 1993 tax returns were filed which specified her marital status as “separated”.

[16] Page 1 of an affidavit of K. C. was filed. She was the Added Party’s Probation Officer with the Yukon Territorial Government from May 1989 until June 1991. She stated that on December 5, 1990 the Appellant was charged with assaulting the Added party and she assisted in relocating her to Ontario.

[17] In a letter dated July 10, 2017 the Appellant stated that he understood that the Added Party had inherited an estate that he did not benefit from and also that she had remarried in the early 2000’s.

SUBMISSIONS

[18] The Appellant submitted that the DUPE should not be allowed because:

a) The Added Party benefited during the marriage from her financial mismanagement which was criminal and fraudulent in nature;

b) She misrepresented his involvement with the children;

c) Her remarriage must prevent the credit spit; and

d) Granting a split would be an endorsement of her behaviour.

[19] The Respondent submitted that the DUPE was performed in accordance with the CPP because:

a) Section 55.1 of the CPP makes DUPE mandatory in the event of a divorce occurring on or after January 1, 1987;

b) The evidence shows that the Appellant and the Added Party separated in 1989 and were divorced in June 1994 and the appropriate end date of the division was December 31, 1988 and that the Appellant does not dispute that date; and

c) The discretion available under subsection 55.1(5) of the CPP would only apply if both parties would be subject to a decrease in their pensions as a result of the DUPE and no other discretion is available under the legislation.

ANALYSIS

[20] 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 and cohabitation. Section 55.1 makes that division mandatory following a judgment granting a divorce.

[21] The Appellant does not dispute the dates of marriage and separation as found by the Respondent following reconsideration. When the division was initially granted for the period of cohabitation between December 1966 to January 1993, the Appellant objected and provided

evidence of an earlier separation date, being August 1990. The Added Party also provided evidence of the period of cohabitation. The Respondent found the date to be December 31, 1988, earlier than the Appellant had stated. The Tribunal agrees with this period. While there was much conflicting evidence in the documents, the Respondent relied upon the affidavit sworn by the Added Party in July 2015 and CRA statements which both point to a separation date in 1989. The Added Party did not appeal that decision.

[22] The Appellant submits, however, that as a result the Added Party's course of conduct throughout the relationship and in this appeal, the Tribunal should disallow the credit split. The Respondent responds that the only discretionary powers provided are under Section 55.1(5) which allows the cancellation or refusal of the credit splitting occur if both parties' benefits are reduced as a result of applying Section 55.1. There is no evidence before me that this is the case and the Tribunal finds that section 55.1(5) is not applicable in this appeal.

[23] Under certain circumstances parties can also agree in writing that there be no division pursuant section 55.2(3) of the CPP. There was no agreement of this kind between the parties and the Tribunal concludes that section 55.2(3) is not applicable to this appeal.

[24] There is no other discretion provided for under the CPP. Parliament in enacting these provisions determined that credit splitting following divorce would be mandatory and without regard to other circumstances, whether they are the Appellant's allegations of financial mismanagement by his former spouse, her remarriage or the Added Party's allegations of abuse by the Appellant. The Federal Court of Appeal noted in *MHRD v. Wiemer [1998] FCJ No. 809* that "The intent of Parliament clearly was to install a regime of compulsory credits splitting to protect spouses or former spouses in case of a failure of their marriage or common –law relationship" and "The only exceptions to the mandatory nature of the regime are to be found in subsections 55.1(5) and 55.2(3)." As a result, the law simply does not allow for the relief requested by Appellant.

[25] 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. The Tribunal cannot consider extenuating circumstances to disallow the credit splitting with his former spouse.

[26] As a result, the Tribunal finds that the Added Party was entitled to a DUPE for the period between January 1966 to December 1988.

CONCLUSION

[27] The appeal is dismissed.

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