



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. B v. Minister of Employment and Social Development and the Estate of D. B.*,
2017 SSTGDIS 179

Tribunal File Number: GP-17-1508

BETWEEN:

N. B.

Appellant

and

Minister of Employment and Social Development

Respondent

and

The Estate of D. B.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Tyler Moore

DATE OF DECISION: November 24, 2017

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a reversal and return of CPP credits following an application for a Division of Unadjusted Pensionable Earnings. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on June 7, 2017.

[2] This appeal involves whether or not a DUPE can be reversed following the Appellant's application to do so.

[3] Section 55.1 of the CPP sets out when a mandatory division of unadjusted pensionable earnings is to take place.

[4] Paragraph 55.1(1)(1) of the CPP sets out that once an application is filed, a DUPE will take place once the Minister is informed of a judgment granting divorce.

[5] 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).

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

EVIDENCE

[7] The Appellant applied for a DUPE on May 13, 2016. He and the deceased contributor had been married on August 31, 1973 and cohabited together until August 2007. They were divorced on November 10, 2012.

[8] The deceased contributor passed away on March 31, 2016.

[9] The DUPE was carried out on September 9, 2016.

SUBMISSIONS

[10] 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).

[11] The Appellant submitted that:

- a) The Appellant was never informed of his right to withdraw his application within 60 days of making it.
- b) The Appellant's CPP payments have decreased substantially since the DUPE was made. If the deceased contributor was still alive and receiving the newly deducted amount, the Appellant would not have made an appeal.

[12] The Respondent submitted that:

- a) The Respondent does not have the discretion to refuse to make the division of credits in this case.
- b) The DUPE was performed in accordance with Section 55.1 of the CPP. It is a mandatory split and the credits are split permanently. The Tribunal does not have the authority to cancel, reinstate, or reverse credits once a DUPE has been done.
- c) It is solely at the discretion of the Minister to withdraw the application should it be evident, immediately prior to the splitting or within 60 days after the division has taken place, that the DUPE is detrimental to both parties.

ANALYSIS

[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.

[14] The Tribunal finds that the mandatory DUPE has been made in accordance with Section 55.1 of the CPP. The Tribunal has no discretion to refuse to make the division already in place based on the evidence presented.

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

CONCLUSION

[16] The appeal is summarily dismissed.

Tyler Moore
Member, General Division - Income Security