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

Citation: *R. P. v. Minister of Employment and Social Development*, 2017 SSTGDIS 186

Tribunal File Number: GP-16-877

BETWEEN:

R. P.

Appellant

and

Minister of Employment and Social Development

Respondent

and

L. P.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: Adam Picotte

DATE OF DECISION: November 28, 2017

Canada

REASONS AND DECISION

OVERVIEW

[1] The Added Party applied for a *Canada Pension Plan* (CPP) division of unadjusted pensionable earnings (commonly referred to as a "DUPE" or a "credit split"). The Respondent approved the Added Party's application, which resulted in a reduction of the total amount of the Appellant's pension credits. The Appellant requested a reconsideration of the Respondent's decision, essentially asking that the Respondent take into consideration additional earnings for the Added Party not contained in her record of earnings. The Respondent denied application for reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

[2] This appeal was heard by Questions and answers for the following reasons:

a) The method of proceeding is most appropriate to allow for multiple participants.

b) 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.

c) The determination on this file requires specific evidence to establish a basis for the appeal. Presuming this can be produced it would then require the Appellant to pursue the matter with Revenue Canada before a final decision on the matter could be made. As such Questions and Answers are appropriate at this time.

[3] The Tribunal has decided that the Appellant is not eligible for a change to the DUPE for the reasons set out below.

Preliminary matters

[4] By letter dated September 28, 2017 the Tribunal Member notified the parties that he would accept written responses to questions posed respecting that the Added Party had additional earnings that did not appear on her record of earnings.

[5] Messenger service receipts from Canada Post for the Appellant and Added Party evidence that both received the notifications on October 4, 2017 and October 13, 2017 respectively.

[6] No related submissions were received from either the Appellant or the Added Party.

EVIDENCE

[7] On October 17, 2013 the Added Party submitted her application for a CPP Credit Split. The Added party indicated that she and the Appellant were married in October 1973 and last resided together in August 1992.

[8] On January 6, 2015 the Appellant provided a declaration detailing that he had lived with his former spouse from October 1973 to July 1992.

[9] This information is confirmed through an Order of the Supreme Court of British Columbia dated November 10, 1993.

[10] At GD2-5 the period of division for the credit split indicated that the period of cohabitation was from October 1973 to August 1992 and that the periods of division of unadjusted pensionable earnings was from January 1973 to December 1991.

[11] On June 30, 2015 the Appellant submitted a letter detailing years he thought that the Added Party`s record of earnings were incorrect. However, he provided no objective evidence such as tax returns or T4s to support his assertions.

[12] At GD2-6 the DUPE spreadsheet indicates that divisions were provided for the years 1973 to the end of 1991.

[13] On February 8, 2016 the Added Party wrote a letter requesting that Service Canada revise her record of earnings as she stated the years 1973 to 1983 appeared to be in error. No particulars of the nature of the error were detailed.

SUBMISSIONS

[14] The Appellant submitted that the division of unadjusted pensionable earnings was incorrect because the Added Party had additional earnings not accounted for in the years while they cohabitated.

[15] The Respondent submitted that the DUPE was correctly applied.

ANALYSIS

Test for a Division of Unadjusted Pensionable Earnings

[16] Section 55.1(1) of the CPP provides that subject to this section and sections 55.2 and 55.3, a division of unadjusted pensionable earnings shall take place in the following circumstances:

> (a) in the case of spouses, following a judgment granting a divorce or a judgment of nullity of the marriage, on the Minister's being informed of the judgment and receiving the prescribed information.

[17] Section 95 of the CPP provides that the Minister shall cause to be established such records, known as the Record of Earnings, of information obtained under this Act with respect to the earnings and contributions of contributors, including information obtained pursuant to any agreement entered into under section 105 with respect to those earnings and contributions, as are necessary to permit.

[18] Section 96 of the CPP provides that every contributor may require the Minister to furnish or make available to them a statement of the unadjusted pensionable earnings shown to that contributor's account in the Record of Earnings, and if the contributor is not satisfied with the statement they may request that it be reconsidered by the Minister.

[19] Section 97 of the CPP provides that notwithstanding section 96, except as provided in this section, any entry in the Record of Earnings relating to the earnings or a contribution of a contributor shall be conclusively presumed to be accurate and may not be called into question after four years have elapsed from the end of the year in which the entry was made.

[20] The effect of sections 95-97 is such that the Minister is responsible for keeping a record of earnings for each contributor to the CPP and four years after an entry is made into the record of earnings that entry is deemed correct and cannot be called into question.

[21] In this case the entries that the Appellant has detailed are incorrect are in excess of four years since entry into the record of earnings. As a result the Appellant has no recourse to request a reconsideration of these years.

[22] The Added Party may have recourse through the Canada Revenue Agency to request revisions to her earnings if she continues to believe the record of earnings is incorrect. However, the Tribunal has no ability to revise the record of earnings in this case.

[23] Even if that were not the case, the Tribunal notes that the Appellant and the Added Party have not provided any objective evidence of their assertions such as tax returns, T4s, or pay stubs that may demonstrate the validity of the record of earnings being incorrect.

[24] As such the Tribunal is satisfied that on balance the Appellant has not proven his case and that the appeal must be dismissed.

CONCLUSION

[25] The appeal is dismissed.

Adam Picotte
Member, General Division - Income Security