



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *O. B. v. Minister of Employment and Social Development*, 2017 SSTGDIS 190

Tribunal File Number: GP-17-1912

BETWEEN:

O. B.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: George Tsakalis

DATE OF DECISION: December 8, 2017

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a survivor's pension. The Respondent denied the application initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on July 24, 2017.

[2] This appeal involves the issue of whether this Tribunal has jurisdiction to increase the maximum retroactive period allowed under the CPP for a survivor's pension.

[3] 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).

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

EVIDENCE

[5] The Appellant, through his Member of Parliament, advised that his wife passed away in September 2014. The Appellant was not part of the funeral preparation process for his spouse. He was not advised that he should apply for a survivor's pension. The Appellant's wife's death certificate was provided to the Respondent. However, the Appellant was not contacted to make him aware of the benefits that he might be eligible to receive, despite the fact that he and his wife were coded as married in the government system. The Appellant takes the position that he should have received a survivor's pension effective the month of September 2014, the month his wife passed away. The file contents confirm that the Appellant applied for a CPP survivor's pension on April 20, 2017, and he was paid a survivor's pension retroactive to May 2016. The file also contains a death certificate, which confirmed that the Appellant's wife passed away on September 1, 2014.

SUBMISSIONS

[6] 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).

[7] The Appellant submitted that:

- a) He was not made aware of his eligibility for a survivor's pension at the time of his wife's passing. He wants to be paid a survivor's pension retroactively to September 2014, as opposed to the retroactive payment date of May 2016 that was made by the Respondent.
- b) He also takes the position that the Respondent had an obligation to let surviving spouses know of their entitlement to a survivor's pension.

[8] The Respondent submitted that:

- a) This appeal should be summarily dismissed because section 72 of the CPP limits the retroactive amount of the survivor's pension that is payable to 11 months prior to a successful application for the benefits. In this case, the Appellant applied for a survivor's pension on April 20, 2017. The Appellant was paid a survivor's pension at the earliest possible date of May 2016, which is 11 months prior to the date of application.
- b) The Tribunal is bound by the language of the CPP and does not have the authority to vary legal requirements set out in the CPP. Since the CPP legislation governs when survivor's pensions must begin, the Tribunal does not have the authority to override the statutory timelines. Therefore, this appeal has no reasonable chance of success and must be summarily dismissed pursuant to subsection 53(1) of the DESD Act.

ANALYSIS

[9] 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.

[10] The Tribunal finds that this appeal must be summarily dismissed.

[11] Subsection 72(1) of the CPP reads as follows:

72(1) Subject to subsection (2) and section 62, where payment of a survivor's pension is approved, the pension is payable for each month commencing the month following

a) the month in which the contributor died, in the case of a survivor who at the time of the death of the contributor had reached thirty-five years of age or was a survivor with dependent children,

b) the month in which the survivor became a survivor who, not having reached sixty-five years of age, is disabled, in the case of a survivor other than a survivor described in paragraph (a), or

c) the month in which the survivor reached sixty-five years of age, in the case of a survivor other than a survivor described in paragraph (a) or (b), but in no case earlier than the twelfth month preceding the month following the month in which the application was received.

[12] Subsection 72(1) of the CPP states that the earliest possible date that the Survivor's pension can be paid in this case is May 2016, which is 11 months prior to the date of the Appellant's April 20, 2017 application. The Appellant's file showed that the Respondent paid the Appellant a survivor's pension retroactively to May 2016. This is the maximum retroactive period allowed under the CPP.

[13] The Tribunal's jurisdiction is limited by powers granted to it by statute. The Tribunal can only grant such remedies as it is empowered by its enabling statute to provide (*R. v. Conway*, 2010 SCC 22).

[14] The powers of the Tribunal relating to CPP appeals are set out in subsections 64(1) and (2) of the *Department of Employment and Social Development Act (DESD Act)*, which reads as follows:

64(1) The Tribunal may decide any question of law or fact that is necessary for the disposition of any application made under this Act.

- (2) Despite subsection (1), in the case of an application relating to the Canada Pension Plan, the Tribunal may only decide questions of law or fact as to
- (a) whether any benefit is payable to a person or its amount;
 - (b) whether any person is eligible for a division of unadjusted pensionable earnings or its amount;
 - (c) whether any person is eligible for an assignment of a contributor's retirement pension or its amount; and
 - (d) whether any penalty should be imposed under Part II of that Act or its amount.

[15] The Tribunal clearly has jurisdiction under paragraph 64(2)(a) of the *DESD* Act to deal with the issue of whether the Appellant is eligible for a survivor's pension or its amount. It does not have the jurisdiction to increase the maximum retroactive period allowed under the CPP for a survivor's pension.

[16] The Tribunal is sympathetic to the Appellant's plight. However, the Tribunal's hands are tied. It must comply with the wording of the statute, and the Supreme Court of Canada has clearly stated that a Tribunal can only grant such remedies as it is empowered by its enabling statute to provide. The Tribunal does not have the jurisdiction to grant relief to the Appellant on compassionate grounds. The issue of whether the Respondent is obligated to notify the Appellant of his right to a survivor's pension at the time of his wife's death is not an issue that this Tribunal can consider under its enabling statute.

[17] In this case, the Appellant applied for a survivor's pension in April 2017. The Respondent made the maximum retroactive payment to the Appellant in accordance with the requirement set out in the CPP, which is May 2016.

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

CONCLUSION

[19] The appeal is summarily dismissed.

George Tsakalis
Member, General Division - Income Security