



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *M. S. v. Minister of Employment and Social Development*, 2018 SST 1

Tribunal File Number: AD-17-661

BETWEEN:

M. S.

Applicant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

Leave to Appeal Decision by: Janet Lew

Date of Decision: January 2, 2018

DECISION AND REASONS

DECISION

[1] The application requesting leave to appeal is refused.

OVERVIEW

[2] The Applicant, M. S., submits that the formula used to calculate the division of unadjusted pensionable earnings, also known as a credit split, between him and his former spouse is unfair because it resulted in a net loss of pension. After the credit split, his former spouse saw an increase in her pension, but he saw a much larger reduction in his pension than he had expected, with an overall loss of close to \$200 per month.

[3] With the support of his former spouse, the Applicant sought to cancel the credit split. The General Division determined that the Applicant could not cancel or withdraw the credit split under the *Canada Pension Plan*. The General Division also determined that the Respondent, the Minister of Employment and Social Development, did not have any discretion, under the circumstances of this case, to cancel the credit split.

[4] The Applicant seeks leave to appeal the General Division's decision, on the basis that the General Division failed to observe a principle of natural justice. I must decide whether the appeal has a reasonable chance of success on this ground.

ISSUE

[5] Does the appeal have a reasonable chance of success on the ground that the Applicant has raised?

GROUNDS OF APPEAL

[6] Subsection 58(1) of the *Department of Employment and Social Development Act* (DESDA) sets out the grounds of appeal as being limited to the following:

- (a) The General Division failed to observe a principle of natural justice or otherwise acted beyond or refused to exercise its jurisdiction;
- (b) The General Division erred in law in making its decision, whether or not the error appears on the face of the record; or
- (c) The General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it.

[7] Before granting leave to appeal, I need to be satisfied that the reasons for appeal fall within the grounds of appeal enumerated under subsection 58(1) of the DESDA and that the appeal has a reasonable chance of success. The Federal Court endorsed this approach in *Tracey*.¹

Did the General Division fail to observe a principle of natural justice?

[8] The grounds of appeal under subsection 58(1) of the DESDA are limited. In the case where a breach of the principles of natural justice might arise, subsection 58(1) of the DESDA requires the breach to have been made by the General Division. The Applicant's allegations, however, do not suggest any involvement on the part of the General Division.

[9] Natural justice is concerned with ensuring that an applicant has a fair opportunity to present his or her case, and that the proceedings are fair and free of any bias. It relates to issues of procedural fairness before the General Division, rather than to, say, how decisions rendered by the General Division affect any of the parties. The Applicant's allegations do not address any issues of procedural fairness or of natural justice as they relate to the

¹ *Tracey v. Canada (Attorney General)*, 2015 FC 1300.

General Division. He has not provided any evidence that the General Division has otherwise deprived him of an opportunity to fully and fairly present his case.

[10] The Applicant does not dispute the calculation of the division of unadjusted pensionable earnings, but argues that the formula used leads to an unfair result and therefore should be “changed to ensure a fairer outcome.” The General Division did not directly address this issue, but it (and, for that matter, the Appeal Division) does not have any jurisdiction to amend the *Canada Pension Plan* or the *Canada Pension Plan Regulations*. The Applicant’s recourse in this regard, if any, lies elsewhere.

CONCLUSION

[11] I am not satisfied that the appeal has a reasonable chance of success. The application requesting leave to appeal is therefore refused.

Janet Lew
Member, Appeal Division