



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *Minister of Employment and Social Development v. F. P.*, 2018 SST 111

Tribunal File Number: AD-17-80

BETWEEN:

Minister of Employment and Social Development

Appellant

and

F. P.

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: February 1, 2018

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the matter is referred back to the General Division for reconsideration.

OVERVIEW

[2] F. P. (Claimant), applied for a Canada Pension Plan retirement pension and began receiving it in March 2009. In 2014, the Minister of Employment and Social Development (Minister) recalculated the amount of pension payable to the Claimant based on further information from the Canada Revenue Agency and decided to reduce the pension payable to him. This resulted in an overpayment of the pension. The Claimant appealed this decision to the Social Security Tribunal. The Tribunal's General Division allowed the appeal. The Minister's appeal of the General Division decision is allowed because the General Division based its decision on an erroneous finding of fact under the *Department of Employment and Social Development Act* (DESD Act).

PRELIMINARY MATTER: FORM OF HEARING

[3] This appeal was decided on the basis of the written record after considering the following: The only issue is the application of specific provisions of the *Canada Pension Plan* (CPP), the parties both filed written submissions, and the *Social Security Tribunal Regulations* require that the Tribunal conduct matters as informally and quickly as the considerations of fairness and natural justice permit.¹

ISSUE

[4] I must decide whether the General Division's finding of fact that the Minister had breached its obligation to give notice of a reduction in payment was made in error under the DESD Act.

¹ Section 3 of the *Social Security Tribunal Regulations*.

ANALYSIS

[5] Subsection 97(4) of the CPP provides that when any reduction is made in the unadjusted pensionable earnings (UPE) of a contributor and it appears that before the reduction is made the contributor had been informed under s. 96 of the amount of earnings shown on their Record of Earnings, the Minister must notify the contributor of their action.

[6] Section 96 of the CPP provides that a contributor may apply in writing for a statement of their UPE shown on their Record of Earnings.

[7] In this case, the General Division decision states that the evidence was unclear as to whether the Claimant had requested a statement of his UPE pursuant to s. 96 prior to the reduction in payment.² The decision also concluded that the Minister had not provided notice of the reduction in retirement benefits payable pursuant to s. 97(4), and on this basis allowed the appeal.

[8] However, the Minister has no obligation to provide notice of any payment reduction unless a request has been made under s. 96 of the CPP. Since it was not clear that such a request had been made, the General Division erred when it concluded that the Minister had not met this obligation.

[9] The General Division's finding of fact that the Minister breached its obligation to provide notice was erroneous. It was made without considering all of the evidence. The decision was based on this finding of fact.

[10] The DESD Act provides that an appeal should be allowed if the General Division based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard to the material before it. Since the DESD Act governs the operation of the Tribunal, and I am satisfied that the General Division made such an erroneous finding of fact, the appeal must be allowed.

² Paragraph 32 of the decision.

CONCLUSION

[11] The appeal is allowed.

[12] The matter is referred back to the General Division for reconsideration as there may be evidence that should be weighed to reach the decision on the merits of the claim.

Valerie Hazlett Parker
Member, Appeal Division

METHOD OF PROCEEDING:	On the written record.
APPEARANCES:	F. P., Appellant Stéphanie Pilon, Counsel for the Respondent