



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. D. v Minister of Employment and Social Development*, 2018 SST 1423

Tribunal File Number: GP-17-1967

BETWEEN:

N. D.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Lianne Byrne

DATE OF DECISION: July 14, 2018

REASONS AND DECISION

OVERVIEW

[1] The Appellant applied for a Canada Pension Plan (CCP) Credit Split. The Respondent performed the division of unadjusted pensionable earnings (DUPE) on June 16, 2017. The Appellant requested a cancellation of the DUPE, which was denied initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on July 31, 2017.

[2] 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).

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

EVIDENCE

[4] The Appellant completed the CPP Credit Split application on February 8, 2017. She indicated therein that she married A. C. on December 22, 1968 and that they last resided together on January 1, 1996. The marriage ended on May 16, 1997. She indicated that A. C. died in 2014. Her application was approved on February 3, 2017 for the period of January 1968 until December 1995. The records of contribution for the Appellant and A. C. confirm that the DUPE was performed for the years 1968 to 1995.

[5] A Marriage certificate dated December 1968 confirms that A. C. and the Appellant were married on December 22, 1968. A Certificate of Divorce from the Ontario Court (General Division) confirms that the marriage was dissolved by a judgement that became effective on May 15, 1997.

[6] By letter dated June 16, 2017 from Service Canada, the Appellant was advised that the amount of her benefit was revised due to a change in her pension credits following the DUPE. The DUPE resulted in a reduction of the total amount of her pension credits. As of July 2017, her retirement pension was reduced from \$585.31 to \$554.19.

[7] The Appellant wrote a letter to Service Canada on June 26, 2017 to request a cancellation of her application. She explained that she received information from her friend that a DUPE would result in an increase to her CPP retirement pension. She would not have applied if she had known that her benefit would decrease.

[8] Service Canada responded by reconsideration decision letter dated July 12, 2017 that credit splitting is mandatory when a legally married couple divorces after January 1, 1987.

SUBMISSIONS

[9] 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). The Appellant responded by letter dated January 9, 2018 that she would be out of the country on vacation from January 12-February 28, 2018 (possibly until March 15, 2018). She provided submissions, but indicated that she wanted additional time to think and obtain assistance or advice from a paralegal. The Tribunal Member therefore extended the deadline to respond to the Notice of Intention to Summarily Dismiss until May 25, 2018 in order to give the Appellant more time, as requested. She was advised that if the Tribunal did not receive additional submissions by the extended deadline, it would make a decision based on the information already provided. The Appellant did not provide any additional submissions by the extended deadline or by the date of this decision.

[10] The Appellant submitted that:

- a) She has worked hard for her retirement pension and this money does not belong to the Government of Canada.
- b) She will appeal any unfavourable result and voice her appeal in forums such as social media or television.

[11] The Respondent submitted that:

- a) The Appellant's application for the DUPE cannot succeed as the CPP does not allow the reversal or cancellation of a DUPE in these circumstances. The DUPE is mandatory and cannot be reversed.

ANALYSIS

[12] The Appellant applied for a DUPE on February 8, 2017. She indicated in her application that she was married to A. C. from December 22, 1968 to May 15, 1997 and that they last resided together on January 1, 1996 and divorced in May 1997. A Certificate of Divorce from the Ontario Court (General Division) confirms that the marriage was dissolved by a judgement that became effective on May 15, 1997.

[13] Paragraph 55.1(1)(a) of the CPP provides that a DUPE shall take place following a judgment granting a divorce on the Minister's being informed of the judgment and receiving the prescribed information. Therefore, after receiving the Appellant's application, the DUPE was performed in accordance with paragraph 55.1(1)(a).

[14] The DUPE is mandatory under the circumstances and there are no exceptions applicable to allow the DUPE to be cancelled or reversed. As stated in *Upshall v. Canada (AG)*, 2008 FC 813, section 55.1 of the CPP establishes a regime of mandatory division of unadjusted pensionable earnings in the circumstances described in that section. The only exceptions are in s. 55.1(5). In this case, s. 55.1(5) does not apply because there is no evidence that the amount of benefits payable to both persons decreased at the time the division was proposed.

[15] 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.

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

CONCLUSION

[17] The appeal is summarily dismissed.

Lianne Byrne
Member, General Division - Income Security