



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. K. v Minister of Employment and Social Development and the Estate of B. K.*,  
2018 SST 1042

Tribunal File Number: GP-18-1094

BETWEEN:

**L. K.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**The Estate of B. K.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**General Division – Income Security Section**

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DECISION BY: Tyler Moore

DATE OF DECISION: September 28, 2018

## REASONS AND DECISION

### OVERVIEW

[1] The Appellant applied for a Division of Unadjusted Pensionable Earnings (DUPE). The Respondent performed the DUPE on September 27, 2017. The Appellant requested reconsideration of the DUPE, specifically that it be reversed because of the negative impact it had on his own CPP retirement pension. The Respondent denied the request for reconsideration and the Appellant appealed the decision to the Social Security Tribunal (Tribunal) on May 10, 2018.

[2] This appeal involves whether or not the DUPE can be reversed.

[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 Claimant was married to the deceased Added Party from April 1960 until they separated in February 1980. They were eventually divorced in April 1993. Those dates were verified by Statutory Declaration of Legal Marriage. The Added party passed away in November 2016.

[6] On September 27, 2017, the Appellant was advised by letter from the Respondent that his CPP retirement pension amount had been adjusted to reflect the mandatory DUPE that had been performed in accordance with Section 51.1 of the CPP.

[7] On October 10, 2017, the Appellant requested that the DUPE be reversed and that his pension credits be returned to him.

## **SUBMISSIONS**

[8] 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).

[9] The Appellant submitted that:

- a) He is not educated and did not understand the potential consequences from his original application for a DUPE. Had he been advised of the possible negative outcome, he would never have gone ahead and made an application for a DUPE in the first place.

[10] The Respondent submitted that:

- a) An estimate of the DUPE results is not provided, in any case, prior to the DUPE being applied. To do so would require divulging confidential information of the non-applicant spouse to an unauthorized party. That would be a breach of the Privacy Act.
- b) While there are exceptions to the mandatory DUPE in subsection 55.1(5), none of the exceptions apply to the Appellant and his former spouse's DUPE. The discretionary provision only applies to the scenario where both contributors would be subject to a decrease in their pension as a result of the DUPE. There is no discretion for the Minister to not perform the DUPE in any other case.

## **ANALYSIS**

[11] 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.

[12] The Tribunal finds that it does not have the authority or discretion to reverse or amend a DUPE that has already been performed in accordance with Section 55.1 of the CPP. The Tribunal is bound by the CPP legislation.

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

## **CONCLUSION**

[14] The appeal is summarily dismissed.

Tyler Moore  
Member, General Division - Income Security