Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *Minister of Employment and Social Development v F. P.*, 2018 SST 1270

Tribunal File Number: AD-18-526

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: December 4, 2018

Canada

DECISION AND REASONS

DECISION

[1] The appeal is allowed and the decision that the General Division should have given is made.

OVERVIEW

[2] F. P. (Claimant) began to receive a Canada Pension Plan retirement pension in 2009. This pension was based on his income before his retirement, including $27,250 in income for 2005 and 2006, as reported on the Claimant's Record of Earnings. In 2010, the Canada Revenue Agency (CRA) posted amended income information that showed the Claimant's income for 2005 as $8,000 and for 2006 as $9,402. In 2014, the Minister of Employment and Social Development (Minister) acted on this adjustment of income and recalculated the amount of the Claimant's pension income. This resulted in an overpayment to the Claimant of approximately $839 and a reduction in the monthly pension amount.

[3] The Claimant appealed the Minister's decision to the Tribunal to adjust the monthly amount of his pension and the overpayment. The Tribunal's General Division allowed the appeal on the basis that the Minister failed to follow required notice provisions set out in the *Canada Pension Plan* (CPP). The Minister appealed this decision to the Tribunal's Appeal Division, which allowed the appeal and returned the appeal to the General Division for reconsideration. The General Division, on reconsideration in 2018, allowed the Claimant's appeal on the basis that the Minister could not call into question any entry in the Claimant's Record of Earnings after four years had passed.

[4] The Minister appealed this decision as well. The Minister's appeal is allowed. The General Division erred in finding that the Minister had called the Claimant's Record of Earnings into question after four years had passed. The Claimant's appeal is dismissed because the Minister was correct to adjust his pension entitlement.

PRELIMINARY MATTERS

[5] I decided this appeal on the basis of the written record after considering the following:

a) The legal issue to be decided is straightforward;

b) The parties have made oral and written submissions to the General Division and written submissions to the Appeal Division on this issue;

c) The facts are not in dispute;

d) The *Social Security Tribunal Regulations* require that the matter proceed as quickly as the circumstances and considerations of fairness and natural justice permit;

[6] The parties attended a pre-hearing conference where procedural and other issues were discussed. The Claimant later rejected a settlement proposal from the Minister. I did not consider any settlement discussion in making the decision on this appeal.

ISSUE

[7] Did the General Division make an erroneous finding of fact when it decided that the Minister could not call into question the Claimant's Record of Earnings after four years had passed?

ANALYSIS

[8] The *Department of Employment and Social Development Act* (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that can be considered. They are that the General Division failed to observe a principle of natural justice or made a jurisdictional error, made an error in law, or based its decision on an erroneous finding of fact made in a perverse or capricious manner or without regard for the material before it. The Federal Court instructs that "perverse" has been found to mean "willfully going contrary to the evidence." "Capricious" has been defined as being "so irregular as to appear to be ungoverned by law." A

finding of fact for which there is no evidence before the Tribunal will be set aside because it is made without regard for the material before it.[1]

[9] The CPP states that a Record of Earnings is presumed to be accurate and, with some exceptions, may not be called into question after four years have passed from when the entry in question was made.[2] None of the exceptions are relevant to this case.

[10] The Minister initially calculated the amount of retirement pension payable to the Claimant based on income information in his 2008 Record of Earnings, which showed the Claimant's income as $27,250 for 2005 and 2006.[3] In 2010, only two years after that Record of Earnings was issued, CRA amended it to show his earnings as $8,000 for 2005 and $9,402 for 2006.[4]

[11] The Minister acted on this change of information in 2014. The Minister did not call the Record of Earnings into question more than four years after the entry had been made. However, the General Division concluded that the Minister called the 2008 Record of Earnings into question more than four years after the entry had been made.[5] This is an erroneous finding of fact. It was made without regard for all of the material before it. The decision was based on this erroneous finding of fact. Therefore, the appeal must be allowed.

REMEDY

[12] The DESD Act sets out what remedies the Appeal Division can give when an appeal is allowed, including giving the decision that the General Division should have given.[6] The DESD Act also gives the Tribunal authority to decide any question of law or fact necessary for the disposition of an application.[7] In this case, it is appropriate that I make the decision that the General Division should have made. The facts are not in dispute, and the record before me is complete. The parties have made written submissions at both the General Division and the

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[1] *Rahal v Canada(Citizenship and Immigration)*, 2012 FC 319.
[2] CPP s 97(1).
[3] GD2-22.
[4] GD4-7.
[5] General Division decision para 8.
[6] DESD Act s 59.
[7] DESD Act s 64(1).

Appeal Division, which I have considered. This appeal was started in 2015, so a significant amount of time has passed without resolution.

[13] It is not disputed that the Minister based its initial calculation of the amount of retirement pension payable on the 2008 Record of Earnings. This was amended in 2010 to reflect the Claimant's actual income. This was done within four years of the initial entry being made, so it was not done in error.

[14] In 2014, the Minister acted on this information and recalculated the amount that the Claimant should have received and should receive on an ongoing basis. The Minister made no errors when it recalculated the Claimant's pension.

[15] The Minister gave no reason for the fact that it took approximately four years to act on the adjusted income information. This delay also resulted in a higher overpayment to the Claimant, which could have been avoided if the Minister had acted in a timely fashion. However, I have no legal authority to grant any relief to a party based on delay or extenuating circumstances.

[16] I do not have legal authority to decide how any repayment of the overpayment should be made, either. This is for the Minister to decide.

CONCLUSION

[17] The appeal is allowed.

[18] The Claimant's appeal is dismissed.

[19] The Minister is encouraged to consider the Claimant's personal circumstances when it decides how repayment of the overpayment should be made.

Valerie Hazlett Parker
Member, Appeal Division

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