



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *N. D. v Minister of Employment and Social Development*, 2019 SST 344

Tribunal File Number: AD-19-141

BETWEEN:

N. D.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: April 12, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] N. D. (Claimant) married in December 1968 and separated in January 1996. She was divorced by a court order effective May 1997. The Claimant applied for a division of unadjusted pensionable credits (credit split), which was approved by the Minister of Employment and Social Development in February 2017. This resulted in a reduction in her Canada Pension Plan retirement pension.

[3] In June 2017, the Claimant requested a cancellation of the credit split. The Minister refused this request because for parties divorced after January 1, 1987, the credit split is mandatory once the Minister is informed of the divorce.¹ The Claimant appealed this decision to the Tribunal. The Tribunal's General Division summarily dismissed the appeal on the basis that it had no reasonable chance of success. The Claimant's appeal from this decision is dismissed because the decision was not based on any erroneous findings of fact made in a perverse or capricious manner or without regard for the material that was before the General Division.

PRELIMINARY MATTER

[4] The appeal was decided on the basis of the documents filed with the Tribunal after considering the following:

- The legal issue to be decided is straightforward
- The parties' positions on this issue are clear

¹ *Canada Pension Plan* s. 55.1, 55.11

- The parties attended a pre-hearing conference where the relevant law was explained and discussed
- The *Social Security Tribunal Regulations* require that proceedings be completed as quickly as the circumstances and considerations of fairness and natural justice permit.²

ISSUES

[5] Did the General Division base its decision on an erroneous finding of fact regarding the parties' agreement not to have their Canada Pension Plan credits split upon divorce?

[6] Did the General Division err because it failed to consider the Claimant's dire financial circumstances?

ANALYSIS

Issue 1: Erroneous finding of fact

[7] The Department of Employment and Social Development Act (DESD Act) governs the Tribunal's operation. It sets out only three grounds of appeal that I can consider. 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.³ The Claimant argues that the General Division based its decision on an erroneous finding of fact regarding her agreement with her ex-husband that their Canada Pension Plan credits would not be split after their marriage ended.

[8] To succeed on this basis, the Claimant must prove three things: that a finding of fact was erroneous (made in error), that it was made perversely, capriciously or without regard for the material that was before the General Division, and that the decision was based on this finding of fact.⁴ The finding of fact in question is that the Claimant and her ex-husband had agreed that they would not have their Canada Pension Plan credits split after the end of their marriage. The

² *Social Security Tribunal Regulations* s. 3(1)

³ DESD Act s. 58(1)

⁴ *Rahal v Canada (Citizenship and Immigration)*, 2012 FC 319

General Division does not refer to this agreement, and so did not base its decision on this finding of fact. Therefore, the appeal cannot be granted on this basis.

[9] In addition, the credit split is mandatory in the case of any separation or divorce after January 1, 1987. The Claimant separated from her spouse in 1996 and was divorced in 1997, long after this date. The Claimant resides in Ontario. Ontario has not enacted legislation that would allow parties to withdraw from the mandatory credit split. Therefore, even if the General Division had considered the parties' agreement not to have their CPP credits split, it would have had no impact on the outcome of the appeal because such agreements have no legal validity.

[10] Issue 2: The Claimant's circumstances

[11] The Claimant also says that she is in dire financial straits, and any reduction in her CPP retirement benefits significantly affects her. However, the General Division decision correctly states that the Tribunal has only the legal authority given to it by the legislation.⁵ The Canada Pension Plan does not provide an exception to the mandatory credit split for someone who is in difficult financial circumstances.

[12] The General Division therefore made no error when it failed to consider the Claimant's circumstances.

[13] CONCLUSION

[14] The appeal is dismissed for these reasons.

Valerie Hazlett Parker
Member, Appeal Division

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| METHOD OF PROCEEDING: | On the Record |
| SUBMISSIONS: | N. D., Appellant |

⁵ General Division decision para. 15