



Citation: *H. J. v Minister of Employment and Social Development and A. A.*, 2019 SST 529

Tribunal File Number: GP-18-583

BETWEEN:

**H. J.**

Appellant (Claimant)

and

**Minister of Employment and Social Development**

Minister

and

**A. A.**

Added Party

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

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Decision by: Kelly Temkin

Teleconference hearing on: May 1, 2019

Date of decision: May 7, 2019

## **DECISION**

[1] The Minister correctly split the Canada Pension Plan (CPP) credits of the Claimant and her ex-spouse. The appeal is dismissed.

## **OVERVIEW**

[2] The Claimant applied for a Canada Pension Plan (CPP) credit split<sup>1</sup> (also known as a Division of Unadjusted Pensionable Earnings or DUPE) between herself and the Added Party (the appellant's ex-spouse) for the period they cohabited.<sup>2</sup> The Minister approved the credit split, resulting in a decrease in the Claimant's monthly pension amount.<sup>3</sup> The Claimant then requested that the Minister reverse the credit split.<sup>4</sup> The Minister denied her request initially and upon reconsideration.<sup>5</sup> The Claimant appealed the reconsideration to the Social Security Tribunal (Tribunal).

## **ISSUE**

[3] Can I reverse the credit split?

## **ANALYSIS**

[4] According to the CPP, a credit split is mandatory for divorced spouses once the Minister has been informed of the divorce judgment and received sufficient information about the marriage and its dissolution.<sup>6</sup> The Federal Court of Appeal has recognized that credit splitting is mandatory under these circumstances.<sup>7</sup>

[5] There are two exceptions to the rule. One concerns spousal agreements (such as a separation agreement) expressly opting out of the DUPE in the provinces of Quebec,

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<sup>1</sup> October 17, 2017.

<sup>2</sup> June 1970 and April 1987.

<sup>3</sup> GD3-3 paragraph 7.

<sup>4</sup> January 3, 2018.

<sup>5</sup> GD 2-6

<sup>6</sup> S 55.1(1)(a) of the CPP and s 54(2) of the CPP Regulations.

<sup>7</sup> *Conkin v Canada (Attorney General)*, 2005 FCA 351, at para 3.

Saskatchewan, Alberta and British Columbia.<sup>8</sup> However, since there is no spousal agreement between the parties, this exception is not applicable.

[6] A second exception<sup>9</sup> applies when the amount of benefits paid to *both* former spouses decreased at the time the credit split was made. In this case, however, the Added Party's pension benefit increased, so this exception does not apply either.

[7] Because the Minister was informed of the divorce judgment and received the necessary information about the marriage and its dissolution in this case, and neither exception to the rule that a credit split is mandatory applies, the Minister is required to proceed with the credit split in spite of the Claimant's request that it be reversed.

[8] The Claimant is asking me to reverse the credit split. She testified that she does want her former spouse to receive any money. She was very upset that the credit split reduced her monthly entitlement. She asked me to review her written submissions.<sup>10</sup> In her written submissions, she argues, essentially, that the Added Party's pension should not increase at the expense of her pension, because she was financially disadvantaged as a result of their relationship, and because the Added Party did not work for the credits that were transferred to him. The Claimant also argues that she has limited income, so reducing her pension amount would cause her financial hardship. She does not dispute any of the facts set out in the Minister's submissions<sup>11</sup> and does not argue that the Minister made a mistake in applying the law to her situation. Rather, she is asking me to ignore the legislation in her case for reasons of fairness, compassion, and extenuating circumstances.

[9] I have no authority to reverse the credit split as requested. I have no authority to override clear statutory provisions on the basis of fairness, compassion, or extenuating circumstances, but must follow the provisions of the CPP.<sup>12</sup>

## CONCLUSION

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<sup>8</sup> S 55.2(3) of the CPP.

<sup>9</sup> S 55(1)(5) of the CPP and s. 46(3) of the CPP Regulations.

<sup>10</sup> GD4

<sup>11</sup> GD3-3.

<sup>12</sup> *Langlois .v. Canada (AG)*, 2018 FC 1108 at para 12

[10] The Minister applied the credit split in accordance with the law,<sup>13</sup> and the credit split is mandatory and permanent.

[11] The appeal is dismissed.

*Kelly Temkin*  
Member, General Division - Income Security

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<sup>13</sup> S 55(1)(a) of the CPP.