



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *G. O. v Minister of Employment and Social Development and J. O.*, 2019 SST 553

Tribunal File Number: AD-19-83

BETWEEN:

G. O.

Appellant

and

Minister of Employment and Social Development

Respondent

and

J. O.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Valerie Hazlett Parker

DATE OF DECISION: June 7, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] G. O. and J. O. married on June 28, 1975.¹ They later separated. J. O. commenced divorce proceedings, and a Decree Nisi was granted on November 27, 1986². A Decree Absolute was issued by the court on March 18, 1987.³ J. O. applied for a division of unadjusted pensionable earnings (DUPE) in April 2016. The Minister of Employment and Social Development refused the application because it was made late. J. O. appealed this decision to the Tribunal. The Tribunal's General Division allowed the appeal and decided that J. O. is entitled to the DUPE.

[3] G. O. applied to appeal this decision to the Tribunal's Appeal Division. I granted leave to appeal because the appeal had a reasonable chance of success on the basis that the General Division erred in law regarding when the parties were divorced. Although the General Division erred about the date that the parties' divorce took effect, the appeal is dismissed because the General Division made no error in law.

PRELIMINARY MATTER

[4] J. O. filed a copy of the Petition for Divorce that she and her lawyer signed on May 28, 1986, with the Appeal Division, and would like me to accept this evidence. Counsel for G. O. did not object to this document being filed as new evidence, or to my considering it to make my decision. The Minister's Representative objected to me accepting this document as it is new evidence.

[5] The Federal Court teaches that new evidence is not generally permitted on an appeal under the *Department of Employment and Social Development Act* (DESD Act).⁴ An appeal

¹ Certificate of marriage GD2-19

² Decree Absolute GD2-20

³ *Ibid.*

⁴ *Canada (Attorney General) v. O'Keefe*, 2016 FC 503

under the DESD Act is not a re-hearing of the initial claim, but a determination of whether the General Division made an error under the DESD Act on which the Appeal Division should intervene. The Petition for Divorce is not accepted as evidence, and I have not considered it in making my decision. It is new evidence, and as such should not be admitted. In addition, this document shows that J. O. signed the Petition for Divorce on May 28, 1986. It does not show when the divorce proceedings were started. Therefore, it is not necessary for me to consider it to make my decision.

ISSUE

[6] Did the General Division make an error in law when it decided when the parties were divorced?

ANALYSIS

[7] The 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, 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.⁵ G. O. argues that the General Division made an error in law, and the Appeal Division should intervene accordingly.

[8] This case hinges on when G. O. and J. O. were divorced. If they were divorced in 1986, J. O. applied too late to obtain a DUPE because the legislation required that a DUPE application be made within three years of the divorce⁶. If they were divorced after January 1, 1987, J. O. did not apply too late to obtain a DUPE because there was no limitation on when the DUPE application could be made⁷. The General Division found that the parties were divorced in March 1987, the date of the Decree Absolute so J. O.'s application was not too late.

[9] G. O. argues that the parties' divorce should be effective on December 28, 1986, because the *Divorce Act*, 1985 should apply to their divorce proceedings. This legislation was proclaimed

⁵ DESD Act s. 58(1)

⁶ *Canada Pension Plan* s. 55(1)

⁷ *Ibid.* s. 55.1(1)(a)

in force on June 1, 1986, and abolished the decree nisi and decree absolute divorce process. Instead it provides that a divorce is effective 31 days after the divorce order is made. G. O. argues that this would be December 27, 1986, thirty days after the Decree Nisi, and therefore J. O.'s application is late.

[10] G. O. argues that whether the *Divorce Act* 1968 or the *Divorce Act* 1985 applies to this case depends on when the divorce application was started. He says that he was not given notice of the proceedings until he was served with the Petition for Divorce on June 5, 1986, so this is when the proceedings commenced. However, the *Divorce Act* 1985 contains a transition provision that states:

Proceedings commenced under the *Divorce Act* [1968], before the day on which this Act comes into force and not finally disposed of before that day shall be dealt with and disposed of in accordance with that Act as it read immediately before that day, as though it had not been repealed.⁸

So, if the divorce proceedings were started before June 1, 1986, the *Divorce Act* 1968 applies.

[11] Neither party provided evidence to the General Division that demonstrated when the proceedings were commenced. G. O. was served with the documents on June 5, 1986. Proceedings are not started when documents are served, but when they are issued by the Court, before the responding party is served with the documents. Therefore, the proceedings were started some time before June 5, 1986.

[12] However, I need not decide when the divorce proceedings were commenced because the parties were not divorced at the commencement of them. There is no evidence that J. O. used any incorrect court procedures or forms to start divorce proceedings. The court documents produced are those that were required by the *Divorce Act* 1968 as is the Decree Nisi that all parties agree correctly states the date that the divorce was granted.

⁸ *Divorce Act* 1985, s. 33

[13] It is the date that the parties were divorced that this appeal turns on. The Decree Absolute states clearly that Decree Nisi was granted on November 27, 1986. Nothing suggests that this document was produced in error by the Court. The divorce therefore took effect three months later, on February 27, 1987.

[14] The General Division made an error when it decided what date the parties were divorced. The *Divorce Act*, 1968 states that every divorce decree shall in the first instance be a decree nisi, and the decree shall not be made absolute until three months after the decree nisi is granted. It is undisputed that the Decree Nisi in this case was granted on November 27, 1986. Therefore, the divorce became absolute on February 27, 1987. However, the General Division found that the divorce became absolute in March 1987, when the Decree Absolute was issued, not when the divorce could be made absolute.

[15] Nonetheless, this error does not change the outcome of the appeal. The parties were divorced after January 1, 1987. Therefore, the DUPE application was not late.

[16] The General Division made no error in law.

CONCLUSION

[1] The appeal is dismissed.

Valerie Hazlett Parker
Member, Appeal Division

HEARD ON:	June 5, 2019
METHOD OF PROCEEDING:	Teleconference
APPEARANCES:	G. O., Appellant Teresa Ciccone, Counsel for the Appellant Nathalie Pruneau, Representative for the Respondent

	J. O., Added Party
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