



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *H. S. v Minister of Employment and Social Development and N. S.*, 2019 SST 1279

Tribunal File Number: AD-19-479

BETWEEN:

H. S.

Appellant

and

Minister of Employment and Social Development

Respondent

and

N. S.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: October 2, 2019

DECISION AND REASONS

DECISION

[1] The appeal is dismissed.

OVERVIEW

[2] H. S. (Claimant) was married to N. S. (Added Party). The Claimant and the Added Party divorced in 2017. After the divorce, the Added Party applied for a division of unadjusted pensionable earnings (DUPE). A DUPE is also commonly called a “credit split”. The credit split allows ex-spouses to add their unadjusted pensionable earnings together, and then attribute them equally to each person for the years that they were living together.

[3] The Minister approved the application for the credit split initially and on reconsideration. The Claimant appealed to this Tribunal, arguing that the General Division should cancel the credit split.

[4] The General Division summarily dismissed the Claimant’s appeal on June 20, 2019. The General Division member explained that the Claimant’s appeal had no reasonable chance of success because the credit split is mandatory.¹ The Claimant appealed the General Division decision to the Appeal Division.

[5] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify allowing the appeal.

[6] The Claimant has not proven that it is more likely than not that the General Division made an error under the DESDA. The appeal is dismissed.

PRELIMINARY MATTERS

[7] The Tribunal wrote to the Claimant asking him to explain more about which of the errors under the DESDA he believed the General Division member made in their decision.

¹ General Division decision, para 12.

[8] The Claimant requested and received more than one extension to provide that information. The Claimant explained at one point that he needed time to find a lawyer. Later, the Claimant said that he needed extra time in light of some of his health problems. In a pre-hearing conference today, the Claimant confirmed that although he did not provide any more written explanation, he no longer needs an extension. The Claimant asked that I go ahead to the next step based on the information already before it. The Claimant is interested in having the final answer on his appeal.

[9] I will therefore will consider the request for an extension of time to be withdrawn. I am proceeding by making a decision and writing these reasons to explain that decision.

ISSUE

[10] Did the General Division member make an error under the DESDA when they summarily dismissed the Claimant's appeal?

ANALYSIS

Reviewing General Division Decisions to Summarily Dismiss

[11] The General Division member must summarily dismiss an appeal if they are satisfied that the appeal has no reasonable chance of success.² The question the Tribunal must answer is whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the Tribunal must dismiss the appeal after considering the facts, the case law, and the parties' arguments. Rather, the question is whether the appeal is destined to fail regardless of the evidence or arguments that the appellant might provide at a hearing.³

[12] The Appeal Division does not provide an opportunity for the parties to re-argue their case in full. Instead, the Appeal Division conducts a review of the General Division's decision to determine whether it contains errors. That review is based on the wording of the DESDA, which sets out the grounds of appeal for cases at the Appeal Division.⁴ The DESDA recognizes three

² DESDA, s 53(1).

³ This approach is explained in a case called *A.Z. v Minister of Employment and Social Development*, 2018 SST 298.

⁴ DESDA, s 58(1).

types of errors that the Appeal Division can address: errors of fact,⁵ errors of law,⁶ and errors made because the General Division failed to provide a fair process.⁷

The Credit Split (DUPE)

[13] A credit split must happen (is mandatory) when either spouse makes an application that the Minister approves.⁸ Applying the credit split requires that the unadjusted pensionable earnings for each person be added together, divided equally, and then attributed equally to each person. After the Minister applies the credit split, the Minister uses the adjusted record of earnings for each person to calculate the amount of the retirement pension for each person.

Did the General Division member make an error under the DESDA when they summarily dismissed the Claimant's appeal?

[14] The General Division member did not make an error under the DESDA when they summarily dismissed the Claimant's appeal.

[15] The Claimant argues that he worked hard to earn his CPP retirement pension. He says that the reduction in his retirement pension benefit payments as a result of the DUPE is not fair. He notes that the law should encourage ex-spouses to stand on their own two feet financially. He notes that the credit split is hard on him financially. He also has health issues. He says that applying the credit split (by dismissing his appeal at the General Division level) was not fair.

[16] The Minister did not provide further argument at the Appeal Division.

[17] I find that the General Division did not make an error by summarily dismissing the Claimant's appeal. The appeal had no reasonable chance of success. The Claimant has provided arguments about why he would like to have the credit split cancelled. He is in a difficult situation financially. However, the Tribunal must apply the CPP laws as they are written. The General Division and the Appeal Division do not have the option of cancelling the credit split for the

⁵ DESDA, s 58(1)(c) "General Division based its decision on an erroneous finding of fact that it made in a perverse or capricious manner or without regard for the material before it."

⁶ DESDA, s 58(1)(b).

⁷ DESDA s 58(1)(a) failed to "observe a principle of natural justice" or "acted beyond or refused to exercise its jurisdiction".

⁸ *Canada Pension Plan*, s 55.1(1)(a).

Claimant. The law is clear. The Claimant cannot cancel the credit split as the credit split is mandatory.

CONCLUSION

[18] The appeal is dismissed.

Kate Sellar
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCE:	H. S., Appellant