



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *L. K. v Minister of Employment and Social Development*, 2019 SST 1407

Tribunal File Number: AD-19-245

BETWEEN:

**L. K.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

and

**The Estate of B. K.**

Added Party

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**SOCIAL SECURITY TRIBUNAL DECISION**  
**Appeal Division**

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DECISION BY: Kate Sellar

DATE OF DECISION: December 13, 2019

## DECISION AND REASONS

### DECISION

[1] The appeal is dismissed.

### OVERVIEW

[2] L. K. (Claimant) was married in 1960, separated in 1980, and divorced in April 1993. The Claimant's ex-wife died in November 2016. The Claimant asked the Minister to split his pension credits under the *Canada Pension Plan* in January 2017. The Minister split the pension credits on September 27, 2017. This credit split (also called a division of unadjusted pensionable earnings, or "DUPE") 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 Claimant asked for reconsideration. After the credit split, his retirement pension benefits decreased. He wanted the credit split to be reversed. The Minister denied the request for reconsideration. The Claimant appealed to this Tribunal. The General Division dismissed his appeal without holding a hearing (a summary dismissal) on September 28, 2018. The General Division member explained that the Claimant's appeal had no reasonable chance of success because the credit split is mandatory. The Claimant appealed the General Division decision to the Appeal Division.

[4] 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. 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.

### ISSUE

[5] 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**

[6] The General Division member must summarily dismiss an appeal if they are satisfied that the appeal has no reasonable chance of success.<sup>1</sup> 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. Instead, the question is whether the appeal is destined to fail regardless of the evidence or arguments that the appellant might provide at a hearing.<sup>2</sup>

[7] 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.<sup>3</sup> The DESDA describes three types of errors that the Appeal Division can address: errors of fact, errors of law, and errors made because the General Division failed to provide a fair process.<sup>4</sup>

### **The Credit Split (DUPE)**

[8] A credit split must happen (is mandatory) when either spouse makes an application that the Minister approves.<sup>5</sup> 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?**

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

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<sup>1</sup> DESDA, s 53(1); see also the Federal Court's decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

<sup>2</sup> This is described in a case called *AZ v Minister of Employment and Social Development*, 2018 SST 298.

<sup>3</sup> DESDA, s 58(1).

<sup>4</sup> DESDA, s 58(1)(a) to (c).

<sup>5</sup> *Canada Pension Plan*, s 55.1(1)(a).

[10] The General Division explained that it does not have the power to reverse or change a DUPE in this situation. The General Division noted that the impact of the DUPE was negative for the Claimant, but that the General Division did not have the power to reverse or change it.<sup>6</sup>

[11] The Claimant argues that the General Division made an error of law. He has not explained anything more about that error, but he has stated that he has no further arguments to make.<sup>7</sup> The Minister did not provide further argument at the Appeal Division.

[12] 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 Minister applied the credit split. The credit split was mandatory. The credit split had a negative impact on the Claimant's retirement pension. However, the General Division and the Appeal Division do not have the option of cancelling the credit split for the Claimant. I have reviewed the record. The General Division has not ignored or misunderstood the evidence in this case.

## CONCLUSION

[13] The appeal is dismissed.

Kate Sellar  
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	L. K., Appellant

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<sup>6</sup> General Division decision, para 12.

<sup>7</sup> AD1, AD1B.