



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *S. J. v Minister of Employment and Social Development and S. A.*, 2020 SST 585

Tribunal File Number: GP-19-1973

BETWEEN:

S. J.

Appellant

and

Minister of Employment and Social Development

Respondent

and

S. A.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: Tyler Moore

DATE OF DECISION: January 7, 2020

REASONS AND DECISION

OVERVIEW

[1] The Appellant has requested the reversal of a Division of Unadjusted Pensionable Earnings (DUPE). The Respondent denied the request initially and upon reconsideration. The Appellant appealed the reconsideration decision to the Social Security Tribunal (Tribunal) on November 28, 2019.

[2] This appeal involves whether a DUPE was performed in accordance with the legislation, and whether or not the DUPE can be reversed.

[3] Subsection 53(1) of the *Department of Employment and Social Development Act* (DESD Act) states that the General Division must summarily dismiss an appeal if satisfied that it has no reasonable chance of success (*Miter v. Canada (A.G.)*, 2017 FC 262).

[4] I have decided that this appeal has no reasonable chance of success for the reasons set out below.

EVIDENCE

[5] The Added Party applied for a DUPE on October 3, 2018. The application indicated that she and the Appellant lived in a common-law relationship from January 1, 1975 to January 6, 1977. They were then married on January 7, 1977 and cohabited together until February 19, 2014. Their divorce was finalized on August 5, 2018.

[6] The Appellant was advised of the proposed DUPE in a letter dated June 6, 2019. A DUPE was then performed on July 25, 2019 with a period of division from January 1, 1975 to December 31, 2013.

[7] On August 8, 2019, the Minister received a letter from the Appellant which indicated that he was in possession of a court order that would prevent the DUPE. Specifically, the agreement

stated that ‘the benefits paid to each Party under the Canada Pension Plan and Old Age Security pension are their own individual property’¹.

SUBMISSIONS

[8] The Appellant was given notice in writing of the intent to summarily dismiss the appeal and was allowed a reasonable period of time to make submissions as required by Section 22 of the *Social Security Tribunal Regulations* (Regulations).

[9] The Appellant submitted that:

- a) The Added Party should not be entitled to any CPP pension because she did not contribute to it.
- b) The Added Party applied for a CPP credit split knowing full well that she had previously agreed through court order that she was not entitled to do so.
- c) If the CPP credit split is enforced, then the same split should be applied to the OAS pensions.

[10] The Respondent submitted that:

- a) The agreement submitted by the Appellant does not specifically address the division of CPP credits and did not specify that there was to be no division of credits.
- b) The DUPE was performed as required under paragraph 55.1(1)(a) of the CPP. It is mandatory and permanent.

ANALYSIS

[11] The Tribunal is created by legislation and, as such, it has only the powers granted to it by its governing statute. I am required to interpret and apply the provisions as they are set out in the CPP.

¹ GD2-19 in the Hearing File

[12] I find that the DUPE was performed in accordance with Section 55 of the CPP and it cannot be reversed. It is mandatory and permanent. Section 55.1(1) of the CPP sets out when mandatory divisions are to take place. In the case of spouses, following a judgment granting a divorce or a judgment of nullity of the marriage, on the Minister being informed of the judgment and receiving the prescribed information.

[13] The Appellant did submit a court agreement dated August 1, 2014 that has been considered. However, it does not specifically mention that there be no division of unadjusted pensionable earnings under Section 55 of the CPP. So, it would not prevent or invalidate a DUPE.

[14] I am also bound by the CPP legislation and do not have the authority to reverse a DUPE after it has been performed. With respect to the Appellant's submission that the OAS pension be split the same way the CPP credits were, the scope of the appeal relates only to the DUPE.

[15] Accordingly, I find that the appeal has no reasonable chance of success.

CONCLUSION

[16] The appeal is summarily dismissed.

Tyler Moore
Member, General Division - Income Security