



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *C. V. v Minister of Employment and Social Development and D. S.*, 2020 SST 379

Tribunal File Number: GP-19-1426

BETWEEN:

C. V.

Appellant

and

Minister of Employment and Social Development

Minister

and

D. S.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Patrick O'Neil

Date of decision: January 4, 2020

DECISION

[1] The Appellant is not entitled to an extension of time to make a request for reconsideration of the Minister's decision dated May 12, 2009 that approved the Added Party's application for a Division of Unadjusted Pensionable Earnings (DUPE also known as a Credit Split) under the *Canada Pension Plan (CPP)*.

OVERVIEW

[2] The Minister approved the Added Party's Dupe application on May 12, 2009. A Notice of Division sent to the Appellant on May 12, 2009 advised he had ninety days to request the Minister reconsider the decision approving the Added Party's application for a Dupe.

[3] On March 5, 2019, the Appellant requested the Minister reconsider the decision dated May 12, 2009 approving the Added Party's Dupe application. The Minister denied the Appellant's request as it was made more than ninety days after he received the decision. The Appellant appealed the Minister's decision to deny his reconsideration request to the Social Security Tribunal (Tribunal).

[4] A person who is dissatisfied with a decision to allow a DUPE, may, within ninety days after the day the person is notified in writing of the decision, or within such longer period that the Minister may allow, make a request to the Minister for a reconsideration of that decision¹.

[5] The Minister may allow a longer period to make a request for reconsideration of a decision if the Minister is satisfied that there is a reasonable explanation for requesting a longer period and the person has demonstrated a continuing intention to request a reconsideration².

[6] If the request for reconsideration is made more than 365 days after the day the person is notified in writing of the decision, the Minister must also be satisfied that the request for reconsideration has a reasonable chance of success, and no prejudice would be caused to the

¹ Section 81(1) CPP

² Subsection 74.1(3) CPP Regulations

Minister by allowing a longer period to make the request³. All four criteria must be considered by the Minister, and the Minister must be satisfied that all four criteria have been met⁴.

[7] A person who is dissatisfied with a decision of the Minister in relation to further time to make a request for reconsideration may appeal the decision to the Tribunal⁵.

[8] The decision of the Minister to grant or refuse a late reconsideration request is considered a discretionary decision. Case law indicates the Minister's discretion must be exercised judicially⁶.

ISSUE(S)

[9] Did the Minister exercise his discretion judicially when he refused to allow the Appellant a longer period to request a reconsideration?

ANALYSIS

[10] I must determine if the Minister exercised his discretion judicially in refusing the Appellant's late reconsideration request. A discretionary power is not exercised "judicially" if it can be established that the decision-maker: acted in bad faith, acted for an improper purpose or motive, took into account an irrelevant factor, ignored a relevant factor, or acted in a discriminatory manner⁷.

[11] I assume the Minister's decision dated May 12, 2009, was sent to the Appellant by mail. I take judicial notice of the fact that mail in Canada is usually delivered to the addressee within 10 days of mailing. I therefore find it reasonable to conclude the decision was communicated to the Appellant by May 22, 2009.

[12] The Minister advised the Appellant in the decision letter dated May 12, 2009, of his right to request a reconsideration, and the requirement to make such request within ninety days of

³ Subsection 74.1(4) CPP Regulations

⁴ *Lazure v. Attorney General of Canada* 2018 F.C. 467

⁵ Section 82 CPP

⁶ *Canada (A.G.) v. Uppal* 2008 FCA 388

⁷ *Canada (A.G.) v. Purcell* [1996] 1 F.C. 644

receipt of the decision. The Minister received the Appellant's request for reconsideration on March 5, 2019, being almost ten years (3564 days) after receipt of the decision.

Reasonable explanation for the delay.

[13] The Minister advised there is no record of telephone calls or written enquiries received from the Appellant subsequent to his receipt of the decision dated May 12, 2009, prior to a call on April 17, 2019, and his reconsideration request received March 5, 2019⁸ respectively. The decision advised the Appellant of his right to request a reconsideration, and the requirement to make such request within ninety days of receipt of the decision. The Appellant has not provided a reasonable explanation for his significant, almost ten year, delay in submitting his reconsideration request. I find the Appellant has not provided a reasonable explanation for the delay in submitting his reconsideration request.

Continuing intention to request a reconsideration.

[14] The Appellant never contacted the Minister to advise that he intended to request a reconsideration during the period subsequent to his receipt of the decision dated May 12, 2009, and receipt by the Minister of his written request on March 5, 2019. I find the Appellant has not demonstrated a continuing intention to request a reconsideration.

Reasonable chance of success.

[15] A DUPE is mandatory in the case of former spouses, following the issuance of a judgment granting a divorce under the Divorce Act, on the Minister being informed of the judgment, and receiving the prescribed information⁹.

[16] In determining the period for which the unadjusted pensionable earnings of the former spouses subject to a division shall be divided, only those months during which the former spouses cohabited shall be considered¹⁰.

⁸ GD4 page 3 paragraph 6

⁹ Section 55.1(1)(a) CPP

¹⁰ Section 55.1(4) CPP

[17] In determining the months during which the former spouses cohabited, those months shall be determined as beginning with the first month of the year the former spouses were married and ending in the last month of the year before they commenced living separate and apart¹¹.

[18] The Appellant and the Added Party were married to each other on May 28, 1977¹². They were divorced pursuant to Divorce Judgment dated November 2, 1995¹³ effective December 5, 1995¹⁴. The Added Party declared in her DUPE application declared that she and the Appellant last resided together in April 1994¹⁵. The Appellant does not dispute the dates the Added Party declared they lived together¹⁶.

[19] The Minister approved the Added Party's DUPE application with the period of division being from January 1, 1977 to December 31, 1993, being from the first month of the year the Appellant and Added Party were married and the end of the year before the year they commenced living separate and apart¹⁷. The Minister's decision approving the Added Party's DUPE application complied with CPP and CPP Regulations, and was mandatory. I find the Appellant's request for a reconsideration has no reasonable chance of success.

Prejudice to the Minister.

[20] The Minister has significant resources and has not suggested prejudice would be caused by allowing the Appellant a longer period to make a request for reconsideration. I find the Minister would not be prejudiced by allowing a longer period to request a reconsideration.

The Minister's discretion was exercised judicially when he refused to allow the Appellant a longer period to request a reconsideration.

[21] The CPP Regulations require the Minister be satisfied before allowing a longer period to make a request for reconsideration of a decision, that there is a reasonable explanation for

¹¹ Section 78.1(1)(a) CPP Regulations

¹² Certificate of Marriage GD2 page 15

¹³ GD2 pages 17-19

¹⁴ Certificate of Divorce GD2 page 16

¹⁵ GD2 pages 4-7

¹⁶ GD2 page 10

¹⁷ GD2 page 11

requesting a longer period, and a continuing intention to request a reconsideration. If the request is made more than 365 days after the day the person is notified in writing of the decision, the Minister must also be satisfied that the request for reconsideration has a reasonable chance of success, and no prejudice would be caused to the Minister by allowing a longer period to make the request. All four criteria must be considered by the Minister, and the Minister must be satisfied all four criteria have been met.

[22] The Minister considered each of the four criterion. He was not satisfied that three of the criteria were met. He was not satisfied the Appellant provided a reasonable explanation for requesting a longer period to request a reconsideration, demonstrated a continuing intention to request a reconsideration, or that the request for reconsideration had a reasonable chance of success. I find the Minister exercised his discretion judicially when he refused to allow the Appellant a longer period to request a reconsideration. I do not find the Minister acted in bad faith, acted for an improper purpose or motive, took into account an irrelevant factor, ignored a relevant factor, or acted in a discriminatory manner when he made the determination to refuse the Appellant's late request for a reconsideration. Accordingly, I find the Appellant is not entitled to an extension of time to make a request for reconsideration of the Minister's decision dated May 12, 2009

CONCLUSION

[23] The appeal is dismissed.

Patrick O'Neil
Member, General Division - Income Security