



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *W. L. v Minister of Employment and Social Development*, 2020 SST 326

Tribunal File Number: GP-18-1539

BETWEEN:

W. L.

Appellant

and

Minister of Employment and Social Development

Respondent

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

DECISION BY: George Tsakalis

DATE OF DECISION: February 27, 2020

DECISION

[1] W. L. is the Claimant in this case. He alleged that the Minister of Employment and Social Development (the Minister) breached his rights under the *Canadian Charter of Rights and Freedoms* (the *Charter*). I released a decision on October 29, 2019. I dismissed the Claimant's *Charter* challenge. I also advised the Claimant and the Minister that I was considering summarily dismissing the remainder of this appeal.

[2] I am summarily dismissing the remainder of this appeal because it has no reasonable chance of success.

OVERVIEW

[3] The Claimant married his former spouse in June 1966. They separated in September 1986.¹ They divorced in May 2005.²

[4] The Claimant's former spouse applied for a division of unadjusted pensionable earnings (DUPE) or a pension credit split under section 55.1 of the *Canada Pension Plan* (CPP) in August 2005. The Minister granted her application to divide pension credits in November 2005, over the Claimant's objections. The Minister's decision resulted in reducing the Claimant's CPP retirement pension from \$544.11 to \$427.20 a month.³ The Claimant did not request a reconsideration of the Minister's decision or appeal this decision to the Social Security Tribunal's predecessor tribunal.

[5] The Claimant's former spouse died in February 2015. The Claimant applied for a return of the pension credits transferred to his former spouse in September 2015. He argued that his former spouse never applied for a CPP retirement pension at the age of 65. She continued working full-time up to the time of her death. The Claimant wanted the pension credits returned to him because they "were no longer required maintain a benefit to her."⁴ He asked for a recalculation of his retirement pension to March 2015, the month after his former spouse died.

¹ See GD2-22

² See GD2-23

³ See GD2-25

⁴ See GD2-21

[6] The Minister denied the Claimant's application. The Minister advised the Claimant that pension credit splits are permanent. Pension credits are not personal property that can be borrowed and later returned to an owner. The CPP did not allow for a reversal of a DUPE after the death of a spouse. The CPP also did not provide the Minister with the power to make exceptions to this general rule.⁵

[7] The Claimant requested that the Minister reconsider its decision. The Minister denied the Claimant's reconsideration request. The Minister repeated its position that pension credit splits are permanent and cannot be reversed after a spouse dies.⁶

[8] The Claimant appealed the Minister's reconsideration decision to the Tribunal. His appeal did not begin as a *Charter* appeal. But he eventually wrote to the Tribunal and argued that the Minister's decision not to restore his pension credits upon the death of his former spouse violated his *Charter* rights.

[9] I dismissed his Charter appeal on October 29, 2019. I ruled that the DUPE and the CRDO did not violate the *Claimant's* Charter rights. In that same decision, I advised the parties that I was considering summarily dismissing the remainder of this appeal.

[10] I gave the Claimant notice in writing of my intention to summarily dismiss the remainder of his appeal. I gave the Claimant a reasonable period of time to make submissions as required under Section 22 of the *Social Security Tribunal Regulations*.⁷

[11] The Claimant and the Minister provided the Tribunal with their submissions. I have reviewed the submissions. I have decided to summarily dismiss the remainder of his appeal.

[12] I now turn my attention as to why I am summarily dismissing the remainder of the Claimant's appeal.

ISSUE

⁵ See GD2-15

⁶ See GD2-12

⁷ See IS0A

[13] Does the remainder of the Claimant's appeal have a reasonable chance of success?

ANALYSIS

I must summarily dismiss the remainder of the Claimant's appeal because it has no reasonable chance of success

[14] I must summarily dismiss an appeal if I am satisfied that it has no reasonable chance of success.⁸ There is no reasonable chance of success where it is plain and obvious on the record that the appeal is clearly bound to fail.⁹ I find that it is plain and obvious on the record that the Claimant's appeal is clearly bound to fail.

[15] The Claimant's submissions in response to the Notice of Intention to Summarily Dismiss were similar to his arguments in relation to his *Charter* appeal. He argued that the Minister's actions led to an unjust enrichment to the CPP.¹⁰ He argued that the Minister abused its power, engaged in financial abuse, abused seniors, and violated his equality rights.¹¹

[16] The Claimant seems to be rearguing his *Charter* appeal that I dismissed. I have already decided that the DUPE and the Child Rearing Drop Out (CRDO) provisions did not violate the Claimant's *Charter* rights.

The DUPE in this case was performed in accordance with the CPP

[17] The Claimant in his initial Notice of Appeal requested that the Minister reverse the pension credit split in November 2005 on the grounds of fairness. His pension was reduced to satisfy a credit split for his former spouse, who never ended up using these credits prior to her death.¹²

[18] Paragraph 55.(1)(a) of the CPP states that a DUPE is mandatory in the case of married couples after the Minister is informed of a judgment granting a divorce and receives the information prescribed in subsection 54(2) of the *CPP Regulations*.

⁸ See Subsection 53(1) *Department of Employment and Social Development Act*

⁹ See *The Estate of J.B. v. Minister of Employment and Social Development*, 2018 SST 564

¹⁰ See IS24-3

¹¹ See IS24-5-6

¹² See GD2-5

[19] The Claimant's former spouse provided the Minister with the information that she was required to provide under subsection 54(2) of the CPP *Regulations*. She provided the Minister with a copy of a certificate of divorce.¹³ She provided the Minister with a copy of a certificate of marriage, the dates where both parties lived together, and the dates when they separated.¹⁴

[20] The DUPE in this case was performed in accordance with paragraph 55.1(1)(a) of the CPP. The Federal Court of Appeal recognized the mandatory nature of a DUPE performed under paragraph 55.1(1)(a) of the CPP. A DUPE performed in accordance with the CPP is mandatory. The credits are split permanently and cannot be withdrawn.¹⁵ Individuals are not entitled to cancel a DUPE after the death of their former spouse.¹⁶

I do not have jurisdiction to grant the relief that the Claimant seeks

[21] The Tribunal's jurisdiction is limited to the powers granted to it by statute. I can only grant remedies under the Tribunal's enabling legislation.¹⁷ I have no equitable jurisdiction. I must follow the letter of the law. I cannot make decisions on compassionate grounds.¹⁸

[22] The powers of the Tribunal relating to CPP appeals are set out in the *Department of Employment and Social Development Act* (DESD Act).¹⁹ I have jurisdiction to deal with the issue of the amount of the DUPE.²⁰ I must also follow decisions of the Federal Court of Appeal.

[23] The Claimant asked that the CRDO be applied before the application of the DUPE. The Claimant argued that the CRDO provisions are not applied when the pension credits are split under the DUPE. By not applying the CRDO, this resulted in his former spouse having fewer pension credits. Therefore, more of the Claimant's pension credits were unnecessarily transferred to his former spouse.

¹³ See GD2-107

¹⁴ See GD2-82-83

¹⁵ See *Conklin v. Canada (Attorney General)*, 2005 FCA 351

¹⁶ See *Cornwell v. MHRD* (2003)(CP 19665) (PAB)

¹⁷ See *R. v. Conway*, 2010 SCC 22

¹⁸ See *Canada (Minister of Employment and Social Development) v. Kendall* (June 7, 2004), CP 21960 (PAB) and *S.S. v. Minister of Employment and Social Development*, 2018 SST 705

¹⁹ See subsections 64(1) and (2) of the DESD Act

²⁰ See paragraph 64(2)(b) of the DESD Act

[24] The difficulty with the Claimant's argument is that the Federal Court of Appeal ruled that the CPP does not allow for the CRDO to be applied before the application of the DUPE.²¹

[25] The Claimant asked for a recalculation of the credit split encompassing the new Child Rearing Drop-In (CRDI) provision.²²

[26] The CRDI came into effect in 2019.²³ The CRDI helps parents who stop working or reduce their work hours when they become the primary caregiver to their young children. In certain circumstances, the CPP would "drop in" an amount equal to the parent's average earnings for the five years prior to the birth or adoption of the child, if that amount is higher than their actual earnings during that period. This would increase the pensions of parents who reduce their income to take care of their children.

[27] The new CRDI provision is applied at the time of a DUPE in certain circumstances.²⁴ But the CPP does not allow me to apply the CRDI in this case. The CRDI came into effect on January 1, 2019, well after the November 2005 pension credit split in this case. The general rule is that statutes do not apply retroactively, unless the statute says that it does or by necessary application.²⁵ I do not see anything in the CRDI provisions that says that it can apply to circumstances before January 1, 2019.

[28] After reviewing the evidence and the Claimant's submissions, I find that the remainder of his appeal has no reasonable chance of success. It is plain and obvious on the record that the remainder of the Claimant's appeal is bound to fail.

CONCLUSION

[29] The appeal is summarily dismissed.

George Tsakalis
Member, General Division - Income Security

²¹ See *Upshall v. Canada (Attorney General)*, 2013 FCA 174

²² See IS18

²³ See sections 53.3-53.6 of the CPP

²⁴ See subsection 55.2(8.1) and (8.2) of the CPP

²⁵ See *Dell Computer Corporation v. Union Des Consommateurs*, 2007 SCC 34