



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *B. B. v Minister of Employment and Social Development and D. B.*, 2020 SST 805

Tribunal File Number: GP-19-697

BETWEEN:

B. B.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

D. B.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Teleconference hearing on: May 27, 2020

Date of decision: June 25, 2020

DECISION

[1] The Claimant cannot defer the effective date of the Division of Unadjusted Pensionable Earnings (DUPE or credit split) until his separated spouse starts collecting a *Canada Pension Plan (CPP)* retirement pension. I am dismissing the appeal. Here are my reasons why.

OVERVIEW

[2] The Claimant and the Added Party married on August 20, 1988 and separated on September 15, 2017. There is no spousal agreement opting out of the DUPE. Both former spouses pension benefits did not decrease.

[3] In August 2018, D. B. (the Added party and the Claimant's separated spouse) applied to the Minister for a DUPE under the *CPP*. The Minister approved the credit split, resulting in a decrease in the Claimant's monthly pension amount. The Claimant asked that the Minister to delay the start date of the DUPE and the reduction in his pension until his separated spouse, who is now 57 years old, starts collecting *CPP* retirement benefits. The Minister denied his request initially and upon reconsideration. The Claimant appealed the reconsideration decision to the Social Security Tribunal (Tribunal).

ISSUE

[4] Can the Claimant defer the effective date of the DUPE until his separated spouse starts collecting her *CPP* retirement pension?

ANALYSIS

[5] The Claimant testified that his pension should not decrease until the Added Party collects her *CPP* retirement pension.¹ He worked and contributed to the *CPP* for 45 years. The Added Party may not collect her retirement pension for years or at all. Regardless, he would continue to lose the credit split portion to the government. The deductions to his pension are premature.² He said the law is unclear. The *CPP* may need to be "tweaked" for the timing of the credit split to be correct.

¹ GD1-3 and GD1-5

² GD2-18

[6] The Added Party testified that she did not agree with the government reducing the Claimant's pension. She thought it was unfair for the government to benefit from her marriage to the Claimant. She was willing to withdraw her application for the DUPE and apply later. She stated that my decision should not affect her *CPP* when she retires.

[7] The Minister submits that the *CPP* and the *CPP Regulations* dictate the date on which a DUPE takes place. The Minister has no discretion to modify the effective date of the DUPE.

My findings

[8] Under the *CPP*,³ either party can file an application for a credit split. The Minister will issue a credit split after being informed of the marriage and its dissolution and receiving the necessary documentation.

[9] The Added Party applied for a credit split in August 2018. She provided proof that she and the Claimant were married in August 1988 and separated in September 2017. The Claimant confirmed the dates as accurate. On that basis, the Minister granted the credit split for the allowable periods.

[10] The Claimant requested the Minister defer the credit split until the Added Party collects her retirement pension. However, the credit split is mandatory and permanent in most circumstances once the Minister receives an application and validates it with the necessary documents.⁴ The Claimant's circumstances do not fall within the exceptions under the *CPP*.

[11] I considered the Claimant's arguments (supported by the Added Party) as to why I should defer the deduction from his retirement pension until the Added Party collects her retirement pension. While I acknowledge the Claimant's evidence and submissions, as a Tribunal Member, I have no authority to defer the credit split as requested. I have no authority to override clear statutory provisions based on fairness, compassion or extenuating circumstances. I am required to follow the provisions of the *CPP*.⁵

CONCLUSION

³ S. 55.1(1)(b)(i) of the *CPP* and S. 54.2(1)(b) and S.54.2(2) of the *CPP Regulations*

⁴ *Conkin.v.Canada (AG)*, 2005 FCA 351

⁵ *Langlois.v.Canada(AG)*, 2018 FC 1108

[12] The rules for determining the DUPE are clearly set out in the *CPP* and the *CPP Regulations* and cannot be changed.

[13] The appeal is dismissed.

Kelly Temkin
Member, General Division - Income Security