



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 802

Tribunal File Number: AD-20-775

BETWEEN:

**B. B.**

Applicant

and

**Minister of Employment and Social Development**

Respondent

and

**D. B.**

Added Party

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

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Leave to Appeal Decision by: Neil Nawaz

Date of Decision: September 22, 2020

## REASONS AND DECISION

### DECISION

[1] I have decided not to grant the Applicant leave to appeal because I don't think he has an arguable case.

### BACKGROUND

[2] The Applicant and the Added Party were married in 1988 and separated in 2017. In August 2018, the Added Party applied to split their Canada Pension Plan (CPP) credits.<sup>1</sup> The Minister approved the credit split, resulting in a decrease in the Applicant's monthly CPP retirement pension. The Added Party was 55 years old at the time and not yet receiving a CPP pension.

[3] The Applicant asked the Minister to delay the credit split, and the reduction in his pension, until the Added Party was eligible to collect her CPP retirement pension. The Minister refused this request.

[4] The Applicant appealed the Minister's refusal to the General Division of the Social Security Tribunal. He argued that there should be no decrease in his retirement pension without the Added Party seeing a corresponding increase in her benefits. Since the Added Party would not be receiving a retirement pension for several years, if at all, the Applicant felt that the government was unjustly benefitting from the credit split. The Added Party expressed her support for the Applicant's position.

[5] The General Division held a hearing by teleconference and, in a decision dated June 25, 2020, dismissed the appeal. It determined that the law provided no way to delay a credit split once an application was made.

[6] On September 11, 2020, the Applicant requested leave to appeal from the Tribunal's Appeal Division. He made the following submissions:

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<sup>1</sup> Under the *Canada Pension Plan*, a credit split is formally known as a "Division of Unadjusted Pensionable Earnings" and is governed by sections 55.1 and 55.2.

- The General Division erroneously found that there was no agreement between the spouses to opt out of a credit split;
- The General Division erroneously determined that delaying a credit split was not possible under the law;
- The General Division ignored the fact that the Added Party agreed with his request to delay the credit split;
- The General Division failed to address the unfairness of decreasing his pension without giving the Added Party a corresponding benefit; and
- The General Division denied his appeal without exercising fairness or compassion.

## **ISSUE**

[7] There are only three grounds of appeal to the Appeal Division. An applicant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.<sup>2</sup>

[8] An appeal can proceed only if the Appeal Division first grants leave to appeal.<sup>3</sup> At this stage, the Appeal Division must be satisfied that the appeal has a reasonable chance of success.<sup>4</sup> This is a fairly easy test to meet, and it means that an applicant must present at least one arguable case.<sup>5</sup>

[9] I have to decide whether the Applicant has an arguable case.

## **ANALYSIS**

[10] To succeed at the Appeal Division, a claimant must do more than simply disagree with the General Division's decision. A claimant must also identify specific errors that the General Division made in coming to its decision and explain how those errors, if any, fit into the one or more of the three grounds of appeal permitted under the law.

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<sup>2</sup> The formal wording for these grounds of appeal is found in section 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>3</sup> DESDA sections 56(1) and 58(3).

<sup>4</sup> DESDA, section 58(2).

<sup>5</sup> *Fancy v Canada (Attorney General)*, 2010 FCA 63.

[11] For the following reasons, I have decided that none of the Applicant's reasons for appealing raise an arguable case.

**There is no arguable case that the General Division overlooked a spousal agreement**

[12] The Applicant suggests that the General Division wrongly found that the parties had not opted out of the credit splitting provisions. I don't see any basis for this argument. Indeed, the Applicant included with his request for leave to appeal a portion of a letter from the Added Party's divorce lawyer specifically refusing to waive her right to a credit split.<sup>6</sup> The letter also notes that, even if there were an agreement for such a waiver, Ontario's *Family Law Act* would not permit it. In my view, this reflects an accurate understanding of section 55.2 of the *Canada Pension Plan*.

**There is no arguable case that the General Division erred in finding no way to delay the credit split**

[13] The General Division dismissed the Applicant's appeal because "the credit split is mandatory and permanent in most circumstances once the Minister receives an application and validates it with the necessary documents." Based on this statement, I don't see an arguable case that the General Division misunderstood or misapplied the law. Section 55.1 of the *Canada Pension Plan* says that a credit split "shall take place... following the approval by the Minister of an application made by or on behalf of either spouse" if they have been living separately for more than one year. In this case, there was no question that the parties had separated or that the Minister had approved the Added Party's application. Use of the word "shall" suggests that the Minister has no discretion to delay or cancel the split, although the *Canada Pension Plan* does make an exception if the Minister is satisfied that the amount of "both benefits" would decrease.<sup>7</sup> No such circumstance is present in this case and, even it was, it would be up to the Minister, in his discretion, to decide whether or not to cancel the credit split.

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<sup>6</sup> Letter dated April 27, 2018 from Lori Dubin, barrister and solicitor, AD1-8.

<sup>7</sup> See section 55.1(5) of the *Canada Pension Plan*.

**There is no arguable case that the General Division ignored the Added Party's position**

[14] I don't see an arguable case that the General Division disregarded what the Added Party had to say. In its decision, the General Division acknowledged the Added Party's support for the Applicant:

The Added Party testified that she did not agree with the government reducing the [Applicant's] pension. She thought it was unfair for the government to benefit from her marriage to the [Applicant]. 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.<sup>8</sup>

However, the General Division ultimately decided that the Added Party's support for the Applicant was irrelevant in the absence of any legal mechanism to defer the credit split. In my view, the General Division was within its authority to conclude that the law took precedence over all other considerations.

**There is no arguable case that the General Division could have delayed the credit split on compassionate grounds**

[15] I don't see an arguable case that the General Division acted unfairly when it dismissed the Applicant's appeal. The General Division lacks the authority to consider extenuating circumstances or base a decision on compassionate grounds. While the General Division may not have come to the Applicant's preferred decision, it could not ignore the letter of the law and simply order what it felt was a just result. That kind of power, known as "equity," is traditionally reserved for the courts, and even they resort to it in only the most exceptional circumstances.

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<sup>8</sup> General Division decision, paragraph 6.

**CONCLUSION**

[16] The Applicant has not identified any grounds of appeal that would have a reasonable chance of success on appeal. Thus, the application for leave to appeal is refused.



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Member, Appeal Division

REPRESENTATIVE:	B. B., self-represented
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