Social Security Tribunal of Canada | Tribunal de la sécurité sociale du Canada

Citation: *KB v Minister of Employment and Social Development and MV*, 2020 SST 1216

Tribunal File Number: GP-19-1931

BETWEEN:

K. B.

Appellant

and

Minister of Employment and Social Development

Respondent

and

M. V.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION

General Division – Income Security Section

DECISION BY: Shannon Russell

DATE OF DECISION: November 26, 2020

Canada

REASONS AND DECISION

OVERVIEW

[1] The Appellant and the Added Party were in a common-law relationship until early 2005. In June 2018, the Appellant applied for a division of unadjusted pensionable earnings (sometimes called a division of pension credits). The Minister denied the application initially and on reconsideration because the Appellant applied more than four years after the end of the relationship. The Appellant appealed the reconsideration decision to the Social Security Tribunal.

PRELIMINARY MATTERS

The Tribunal has been unable to contact the Added Party

[2] The Tribunal has been unable to obtain an updated address for the Added Party. The Tribunal asked the Minister to provide the Tribunal with the address the Minister has on file for the Added Party[1]. The Minister provided the address. The Tribunal sent mail to the Added Party at that address, but later learned that the address was no longer valid[2]. The Appellant has written to the Tribunal and indicated that she does not have the Added Party's new address. In August 2020, the Appellant called the Tribunal and provided the Added Party's phone number. A Registry Officer tried calling the Added Party at that number, but was not successful in reaching him[3]. She left a voice message asking the Added Party to call her back, but she did not receive a reply.

[3] I am satisfied that the Tribunal has made reasonable efforts to contact the Added Party. I see no reason to delay the proceeding further, and so I have proceeded to render my decision in the appeal. I do so knowing that my decision does not adversely affect the Added Party.

---

[1] The Minister provided the Tribunal with the Added Party's most recent address on July 28, 2020. On November 16, 2020, the Minister confirmed that it does not have any other address on file for the Added Party (pages GD11-1 to GD11-2).
[2] On August 20, 2020, the Tribunal received an email from a person who lives at the address the Tribunal had on file for the Added Party, and that person explained that the Added Party had not lived at that address for 1.5 years.
[3] The Registry Officer tried calling the Added Party on August 20, 2020

The Appellant filed documents after the deadline of November 13, 2020

[4] The Appellant's deadline to respond to the Intention to Summarily Dismiss was November 13, 2020. On November 17, 2020, the Appellant submitted four pictures. I have not accepted this evidence into the record. First, the evidence was submitted after the deadline of November 13, 2020. Second, the evidence is not relevant to the issue in this appeal. The pictures include, for example, a printout of song lyrics the Appellant wrote as well as a picture of various cards such as a Visa card and health cards.

SUMMARY DISMISSAL

[5] I am required to summarily dismiss an appeal if I am satisfied that the appeal has no reasonable chance of success[4]. When deciding whether an appeal has a reasonable chance of success, I must ask myself whether it is plain and obvious on the record that the appeal is bound to fail, regardless of the evidence and/or arguments that the Appellant might bring at a hearing[5].

[6] I have decided that this appeal does not have a reasonable chance of success. In other words, I have decided that this appeal is bound to fail.

[7] On September 3, 2020, I drafted an Intention to Summarily Dismiss, and in that document I explained why the appeal does not give rise to a reasonable chance of success. I also explained that if the Appellant believes that her appeal should not be summarily dismissed, then she should explain her position in writing and file her response by October 7, 2020.

[8] After I prepared the Intention to Summarily Dismiss, two mistakes happened with this file.

[9] First, Tribunal staff sent the Intention to Summarily Dismiss to the Minister and the Added Party on September 3, 2020 but did not send the document to the Appellant until September 25, 2020.

---

[4] Subsection 53(1) of the *Department of Employment and Social Development Act*. See also the decision in *Miter* v. *Canada (A.G.)*, 2017 FC 262
[5] *A.Z.* v. *Minister of Employment and Social Development*, 2018 SST 298

[10] Second, Tribunal staff sent an irrelevant letter to all parties on September 25, 2020. That letter explained, among other things, that a Tribunal member would soon be assigned to the file and that the parties could continue to submit documents up to November 24, 2020.

[11] On October 27, 2020, I wrote to the parties and I addressed the mistakes. Specifically, I said that, because the Intention to Summarily Dismiss was not sent to the Appellant until September 25, 2020, I would extend the deadline for her reply to November 13, 2020. I also explained that the letter the Tribunal issued on September 25, 2020 (that talks about a Tribunal member being assigned to the file soon) was sent by mistake and should be ignored[6].

ANALYSIS

The undisputed facts

[12] The relevant facts are not in dispute. This is what the evidence shows:

- The Appellant and the Added Party were in a common-law relationship from May 15, 1999 to early 2005[7].
- The Appellant applied for a division of pension credits in June 2018[8].

The Appellant's application for the credit split was filed too late

[13] The legislation states that an application for a division of pension credits must be made within four years after the day on which the former common-law partners started to live separate and apart. The four-year time limit can be waived, but only if the former common-law partners agree in writing to divide the pension credits despite a late application[9].

[14] The Appellant clearly applied for the division of pension credits more than four years after the end of the relationship. The relationship ended in 2005, and she applied in June 2018.

---

[6] Pages GD10-1 to GD10-3
[7] Pages GD2-28 and GD2-31
[8] Page GD2-25
[9] Subparagraph 55.1(1)(c)(ii) of the *Canada Pension Plan*

[15] The Appellant submits that she did not know that there was a time limit to apply for the division of pension credits[10]. This is probably true. However, I cannot approve the application simply because the Appellant did not know about the time limit to apply. The legislation does not have an exception for those who are unaware of the statutory deadline to apply for the division.

[16] The legislation allows former common-law partners to agree in writing to waive the four-year time limit to apply for the division. I understand that the Appellant was hopeful that the Added Party would agree to waive the time limit. However, I have no evidence indicating that the Added Party has ever signed a document to this effect. It is neither my responsibility nor the Minister's responsibility to obtain such a waiver from the Added Party.

[17] The Appellant has submitted several other documents. However, the documents are not relevant. They include things like a document showing that the Appellant's son was diagnosed with gallstones at the age of 6 which was then recorded in the Guinness World Records[11], a letter from the X Regional Police about a third party[12]; an advertisement for a book the Appellant wrote[13]; a recording contract about song lyrics the Appellant wrote[14]; and a 2003 certificate from Inpex Inventors University.[15]

CONCLUSION

[18] The Appellant's application for the division of pension credits cannot be approved because it was filed more than four years after the end of her relationship with the Added Party. The appeal is summarily dismissed.

Shannon Russell
Member, General Division - Income Security

[10] Page GD9-6
[11] Pages GD9-14 to GD9-15 and GD9-34
[12] Page GD9-16
[13] Page GD9-18
[14] Page GD9-19
[15] Page GD9-27