



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *KB v Minister of Employment and Social Development and MV*, 2021 SST 115

Tribunal File Number: AD-21-37

BETWEEN:

K. B.

Appellant

and

Minister of Employment and Social Development

Respondent

and

M. V.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
Appeal Division

DECISION BY: Kate Sellar

DATE OF DECISION: March 30, 2021

DECISION AND REASONS

DECISION

[1] I am dismissing the Claimant's appeal. The General Division did not make an error by summarily dismissing the appeal. These reasons explain how I reached that conclusion.

OVERVIEW

[2] K. B. (the Claimant) was in a common-law relationship until early 2005 with M. V. (the Added Party). In June 2018, the Claimant applied for a division of unadjusted pensionable earnings (DUPE) under the *Canada Pension Plan* (CPP). The DUPE is also called a credit split.

[3] The Minister denied the Claimant's credit split application initially and on reconsideration, deciding that the Claimant's application to split the pension credits was too late. The Claimant applied more than four years after the end of the relationship.

[4] The Claimant appealed to the General Division of this Tribunal. The General Division summarily dismissed the appeal. That means that the General Division found that the Claimant's appeal had no reasonable chance of success, and it dismissed the appeal without a hearing.

[5] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (DESDA) that would justify allowing the appeal.

[6] The Claimant did not prove that the General Division made an error under the DESDA. I dismiss the appeal.

ISSUE

[7] Did the General Division make an error by summarily dismissing the Claimant's appeal?

ANALYSIS

Reviewing General Division decisions

[8] The Appeal Division does not give the Claimant and the Minister a chance to re-argue the case from the beginning. Instead, the Appeal Division reviews the General Division's decision to

decide if it contains errors. That review is based on the wording of the DESDA. The DESDA describes three types of errors that the Appeal Division can address: errors of fact, errors of law, and errors made because the General Division did not provide a fair process.¹

Summary Dismissal

[9] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.² The issue is whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the Tribunal must dismiss the appeal after considering the facts, the case law, and the parties' arguments. Instead, the question is whether the appeal is destined to fail regardless of the evidence or arguments that the claimant might provide at a hearing.³

The Credit Split (DUPE)

[10] A credit split must happen (is mandatory) when either spouse makes an application that the Minister approves.⁴ Applying the CPP pension credit split requires that the unadjusted pensionable earnings for each person be added together, divided equally, and then attributed equally to each person. After the Minister applies the credit split, the Minister uses the adjusted record of earnings for each person to recalculate the amount of the CPP retirement pension for each person.

[11] To split the pension credits, the Claimant needed to apply:

1. within four years after the day she started to live separate and apart from the Added Party; or
2. if she and the Added party agree to split the credit in writing, any time after that four year period.⁵

¹ DESDA, s 58(1).

² DESDA, s 53(1); see also the Federal Court's decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

³ The Tribunal explained this in a case called *AZ v Minister of Employment and Social Development*, 2018 SST 298.

⁴ *Canada Pension Plan*, s 44(1)(b).

⁵ *Canada Pension Plan*, s 55.1(1)(c)(ii).

No Error by Summarily Dismissing the Appeal

[12] The General Division did not make an error under the DESDA by summarily dismissing the Claimant's appeal. The General Division applied the facts to the law, and the Claimant's appeal was bound to fail.

[13] The General Division explained that there is no disagreement about the key facts.⁶ The Claimant and the Added Party were in a common-law relationship from May 1999 to early 2005. The Claimant applied to split the pension credits in 2018. The Claimant applied to split the pension credits long after the four-year deadline described in the law. There was no agreement between the Claimant and the Added Party to split the pension credits. There is nothing in the law that allows the General Division to ignore the rules about approving a credit split. The Claimant did not meet the requirements for splitting the pension credits.

[14] The Minister argues that the General Division did not make any error.⁷ The Claimant's appeal was bound to fail because she cannot have a pension credit split unless she meets the requirements in the law. She applied for the credit split many years after the four-year deadline, and she has not reached an agreement with the Added Party to split the credits. As a result, the credits cannot be split. The Minister argues that the other things the Claimant provided evidence and arguments about (for instance, being a victim of crime) are not relevant to this appeal.⁸

[15] The Claimant wants to split the pension credits with the Added Party, but she has not provided any argument that provide a path to approval for splitting those credits. She makes other arguments about other legal issues that are not part of anything I have the power to decide.

[16] In my view, the General Division did not make an error by summarily dismissing the Claimant's appeal. The Claimant's appeal was bound to fail regardless of what she might have argued if the General Division had decided to hold a hearing. There is no debate about what the requirements are in the law for splitting pension credits. There is no debate about the fact that the

⁶ General Division decision, paras 12, 14, and 16.

⁷ AD11.

⁸ AD11-3.

Claimant's application did not meet those requirements. The General Division has no power to ignore or overlook the requirements and simply approve the pension credit split anyway. The law does not allow that. The appeal was bound to fail.

[17] By dismissing this appeal, I am not providing the Claimant with the outcome she wanted. She gave written evidence about lots of other things about her life and about her involvement in other legal processes that I do not have the power to address. That evidence from the Claimant did not help me to decide whether the General Division made an error. My job was more limited and narrow in this case than what the Claimant hoped.

[18] I reviewed the documents in the Claimant's file at the Tribunal. The General Division did not ignore or misunderstand the evidence in this case.⁹

CONCLUSION

[19] I dismiss the appeal.

Kate Sellar
Member, Appeal Division

METHOD OF PROCEEDING:	On the Record
APPEARANCES:	K. B., Appellant Attila Hadjirezaie, Representative for the Respondent

⁹ Reviewing the record like is consistent with what the Federal Court talked about in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.