



Citation: *ED v Minister of Employment and Social Development*, 2021 SST 508

## **Social Security Tribunal of Canada General Division – Income Security Section**

# **Decision**

|                               |  |
|-------------------------------|--|
| <b>Appellant:</b>             | E. D. (Claimant)   |
| <b>Respondent:</b>            | Minister of Employment and Social Development (Minister)   |
| <b>Decision under appeal:</b> | Minister of Employment and Social Development reconsideration decision dated January 18, 2021 (issued by Service Canada) |
| <b>Tribunal member:</b>       | Kelly Temkin   |
| <b>Type of hearing:</b>       | On the Record  |
| <b>Decision date:</b>         | July 20, 2021  |
| <b>File number:</b>           | GP-21-243  |

## Decision

[1] The *Canada Pension Plan* (CPP) retirement pension of the Claimant, E. D., has been calculated correctly. This decision explains why I am dismissing the appeal.

### OVERVIEW

[2] The Claimant is 75 years old. He has been in receipt of a CPP retirement pension since October 2006. This was the month following his 60<sup>th</sup> birthday.

[3] In October 2020, the Claimant asked the Minister to reconsider how his retirement pension was calculated.<sup>1</sup> He asked the Minister to exclude his years of disability coverage by his private disability insurer. The Minister maintained its original decision on reconsideration.<sup>2</sup> The Claimant appealed to the Social Security Tribunal.

[4] The Claimant says that he did not apply for CPP disability benefit when he went off work in 1993 because the amount would have been deducted from his private disability benefit.<sup>3</sup>

[5] The Minister says the law only allows it to exclude periods of disability from a claimant's contributory period during which he had received a CPP disability pension. Although the Claimant received a private disability pension from 1994 to 2006, he did not receive CPP disability.<sup>4</sup>

### FORM OF HEARING

[6] On July 19, 2021, I held a case conference. All parties attended the conference.

[7] At the case conference the Claimant asked me to make a decision in writing following the conference and the Minister agreed. I decided this appeal based on the documents on file and the submissions I heard on July 19, 2021.

### WHAT I HAVE TO DECIDE

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<sup>1</sup> GD2-8

<sup>2</sup> GD2-10

<sup>3</sup> GD1-5

<sup>4</sup> Canada Pension Plan , Section 44(2)(iii)

[8] Has the Claimant's retirement pension been calculated correctly?

## **REASONS FOR MY DECISION**

### **Why the Claimant cannot have his retirement pension recalculated**

[9] The Claimant is asking the Minister to recalculate his retirement pension.

[10] The Claimant does not dispute that the calculation of his retirement pension is correct in law. His position is that it is not fair that CPP was saved a significant amount of money because he did not apply for a disability pension. He is now penalized for this by receiving a lesser amount for his retirement pension.<sup>5</sup>

[11] He is asking me to correct this “great injustice”<sup>6</sup> by increasing the amount of his retirement pension. While I am sympathetic to the Claimant’s situation, I do not have the authority, on these facts, to increase the amount in his retirement pension by excluding the disability period when the Claimant received a private disability pension. I cannot make exceptions to the rules of the CPP. I am a statutory decision-maker and am required to interpret and apply the rules as they are set out in the CPP. I cannot make decisions based on fairness, compassion, or special circumstances.<sup>7</sup>

## **CONCLUSION**

[12] The Claimant is receiving the correct amount for his retirement pension.

[13] This means the appeal is dismissed.

Kelly Temkin

Member, General Division – Income Security Section

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<sup>5</sup> When the Claimant applied for a retirement pension, he noted he stopped working because of a disability. The processing agent made a note on file to say that the Claimant was called and counselled regarding his situation. The application was processed the Claimant informed of his appeal rights. No reconsideration request was made. At the pre-hearing conference, the Claimant said he did not recall this conversation.

<sup>6</sup> GD1-12

<sup>7</sup> *Pincombe v Canada (Attorney General)*, [1995] F.C.J. No. 1320 (Fed CA); *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.