



Social Security  
Tribunal of Canada

Tribunal de la sécurité  
sociale du Canada

Citation: *The Estate of B. P. v Minister of Employment and Social Development*, 2021 SST 189

Tribunal File Number: AD-21-83

BETWEEN:

**The Estate of B. P.**

Appellant

and

**Minister of Employment and Social Development**

Respondent

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

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DECISION BY: Neil Nawaz

DATE OF DECISION: May 10, 2021

## **REASONS AND DECISION**

### **DECISION**

[1] The appeal is allowed. I am returning this matter to the General Division for another hearing.

### **OVERVIEW**

[2] B. P. was a contributor to the Canada Pension Plan (CPP). She passed away in September 2019. The following month, her estate (Estate) applied for the CPP death benefit.

[3] The Minister refused the application because its records showed that B. P. (the Deceased) had made valid contributions in only eight years.<sup>1</sup> The Minister said that, to be eligible for the death benefit, the Estate needed to show that the Deceased made valid contributions in at least 10 years.

[4] The Estate appealed to the Social Security Tribunal's General Division. On December 4, 2020, the General Division summarily dismissed the appeal because it had no reasonable chance of success. The General Division noted that the Deceased's record of earnings (ROE) showed valid contributions in only eight years. The General Division presumed that the ROE was complete and correct.

[5] The Estate is now appealing the summary dismissal to the Tribunal's Appeal Division.<sup>2</sup> It alleges, among other things, that the General Division ignored a discrepancy between the Deceased's earnings as reported in her income tax return for 1983, and the earnings recorded in her ROE for the same year.

### **SETTLEMENT CONFERENCE**

[6] On April 8, 2021, the parties participated in a settlement conference at my request. During the conference, the Minister conceded that the General Division failed to observe a

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<sup>1</sup> According to the Minister, the Deceased had unadjusted pensionable earnings above the maximum pensionable earnings threshold for the years 1975-80 (inclusive), 1982, and 1985.

<sup>2</sup> Notice of Appeal dated March 5, 2021 (AD1).

principle of natural justice by summarily dismissing the Estate's appeal without giving it a full opportunity to present its case.<sup>3</sup>

[7] I granted the parties' request for more time to consider an appropriate remedy. After I received their written submissions on the matter, I decided that I did not need to hear from them in person.

## ISSUES

[8] There are only three grounds of appeal to the Appeal Division. An appellant must show that the General Division acted unfairly, interpreted the law incorrectly, or based its decision on an important error of fact.<sup>4</sup>

[9] In this appeal I had to answer these questions:

Issue 1: Did the General Division make any errors?

Issue 2: If so, what is the right remedy?

## ANALYSIS

### **Issue 1: Did the General Division make any errors?**

[10] I agree with the Minister that the General Division unfairly dismissed the Estate's appeal before it could fully present its case. As the Minister wrote in its most recent submission:

By summarily dismissing the appeal, the General Division failed to hear the Appellant's case. The Appellant was not given an opportunity to gather and then submit admissible evidence relevant to the issue. In so doing, the General Division's decision to summarily dismiss the appeal was premature and resulted in a breach of natural justice.<sup>5</sup>

[11] When the Estate's executor appealed to the General Division, he identified what he saw as discrepancies in the Minister's numbers for 1974 and 1983. He noted that the Deceased's

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<sup>3</sup> See Minister's letter dated April 27, 2021 confirming its concession, AD06.

<sup>4</sup> The formal wording for these grounds of appeal is found in s 58(1) of the *Department of Employment and Social Development Act* (DESDA).

<sup>5</sup> Minister's letter, see Note 3.

contributions for those years, which the Minister said were too low to be valid, were in fact higher than other years in which she did register valid contributions. The executor added:

I do not have copies of B. P.' tax returns for the years 1974 and 1983. However I was able to request a copy of the 1983 tax return from Canada Revenue Agency and the 1974 return is not available. Since it may take some time for Canada Revenue Agency to provide me with the 1983 return I would request that the deadline of 90 days be extended until I receive the 1983 tax return.<sup>6</sup>

[12] Later, the executor informed the Tribunal that he had still not received the Deceased's 1983 tax return:

I had requested B. P.' tax returns for the years 1974 and 1983. I was informed that the 1974 return was not available but a copy of the 1983 return would be sent to me but it would take four or five months. When I did not receive this return I contacted CRA on October 23 and another request was made to send me the tax return information from their Saskatoon office and this should be sent in November. As of this date I have not received this information.

[13] A month later, the General Division dismissed the Estate's appeal. In its decision, the General Division acknowledged that the Estate had asked the CRA for "a copy of the contributor's income tax return to investigate this issue further."<sup>7</sup> However, despite the executor's previous requests for time, the presiding member chose not to wait for the Deceased's 1983 tax return. It went ahead and decided the appeal without it.<sup>8</sup> The General Division did not say so explicitly, but it implied that the return would not have made any difference to the outcome. It suggested that no evidence, whether on file or not, would have enabled the Estate to qualify for the death benefit.

[14] The General Division might have had a point if the Estate's concerns were trivial, irrelevant, or otherwise destined to fail. However, they were not. The Estate had an argument. It just needed more time to make it.

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<sup>6</sup> Estate's notice of appeal dated April 9, 2020, GD01.

<sup>7</sup> General Division decision, para 7.

<sup>8</sup> The Estate subsequently submitted information indicating that the CRA eventually produced the 1983 tax return on February 22, 2021. See AD1-3.

[15] The General Division proceeded even though it knew the Estate was awaiting potentially significant evidence. In doing so, it ignored the following factors:

- The Deceased's detailed ROE<sup>9</sup> indicated that she made \$1,507 in 1983—below that year's threshold of \$1,800. However, the Deceased's income tax return for the same year<sup>10</sup> suggested another figure—\$2,202 in T4 employment income.
- The detailed ROE also listed two figures for 1984—\$1,341 and \$1,843—that together add up to \$3,184. If the Deceased actually did earn this amount, it was well above the \$2,000 threshold for its year.

It is not for me to say whether 1983 and 1984 are valid years of earnings for the purpose of the CPP death benefit, but if they are, the Estate would then have the required ten years.

[16] The General Division seemed to be under the impression that the ROE was final and beyond challenge: “The Appellant was aware that the Tribunal must consider the earnings and CPP contributions of the Deceased as submitted to be accurate.”<sup>11</sup> While it is true that the Tribunal can't revise an ROE, the Minister and the CRA can. Under section 97(1) of the *Canada Pension Plan*, an entry in an ROE is presumed to be accurate four years after it was made. However, the *Canada Pension Plan* also provides a mechanism by which the presumption can be rebutted. Under section 97(2), the Minister may rectify an ROE if it receives information that an entry is inaccurate. The Estate was attempting to convince the CRA—and by extension the Minister and the Tribunal—that the Deceased's ROE was inaccurate when the General Division too hastily summarily dismissed its appeal.

## **Issue 2: What is the right remedy?**

[17] The Appeal Division has the power to fix the General Division's errors. I have found that the General Division denied the Estate's right to a fair hearing, so that leaves me with essentially

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<sup>9</sup> GD2-22.

<sup>10</sup> AD1-5.

<sup>11</sup> General Division decision, para 7.

two options. I can refer this matter back to the General Division for a new hearing, or I give the decision that the General Division should have given.<sup>12</sup>

[18] The Minister has recommended that I return this matter to the General Division for a new hearing. I agree.

[19] There isn't enough information on file to allow me to decide this matter myself. That's because the General Division proceeded before the Estate could gather the evidence needed to prove its case one way or the other. Unlike the Appeal Division, the General Division's primary mandate is to hear evidence and make findings of fact. As such, it is better positioned than I am to decide whether the Estate was eligible for the death benefit.

**CONCLUSION**

[20] I am allowing this appeal because the General Division didn't give the Estate enough time to prepare and then present its case. In doing so, the General Division deprived the Estate and its executor of their right to be heard.

[21] I am returning this matter to the General Division for another hearing. I am directing the General Division to assign this case to a member other than the one who heard it last time. I am also directing the General Division to grant the Estate at least 120 days to gather whatever evidence the executor thinks is needed to make his case.



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Member, Appeal Division

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| METHOD OF PROCEEDING: | On the record  |
| REPRESENTATIVES:      | G. R., executor of the Estate<br>Attila Hadjirezaie, Representative for the Minister |

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<sup>12</sup> DESDA, s 59(1).