



Citation: *SB v Minister of Employment and Social Development and AB*, 2021 SST 848

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

## Decision

**Appellant:** S. B.

**Respondent:** Minister of Employment and Social Development

**Added Party:** A. B.

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**Decision under appeal:** Minister of Employment and Social Development  
reconsideration decision dated July 14, 2020 (issued by  
Service Canada)

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**Tribunal member:** Adam Picotte

**Type of hearing:** Videoconference

**Hearing date:** October 25, 2021

**Hearing participants:** Added Party  
Added Party's daughter

**Decision date:** November 19, 2021

**File number:** GP-20-1265

## Decision

[1] The appeal is dismissed.

[2] The Claimant, S. B., is not entitled to cancel the division of unadjusted pensionable earnings. This decision explains why I am dismissing the appeal.

## Overview

[3] The Claimant is a divorcee. He and his former spouse were married on October 28, 1990. They divorced on June 22, 2003.<sup>1</sup>

[4] The Claimant wrote that he was in complete disagreement with the decision to approve a division of unadjusted pensionable earnings. He wrote that he did not agree with the decision and felt that it should be reversed based upon the late application criteria set out in the Canada Pension Plan. He wrote that the divorce was finalized on February 12, 2009 and that it was, at the time of the credit split 127 months since the divorce.<sup>2</sup>

[5] The Minister noted that the evidence supports a determination that the division of unadjusted pensionable earnings was correctly applied in the case at hand. The Minister further wrote, that the added party, A. B. applied for a credit split on October 6, 2018. The added party and the Claimant had not entered into a written agreement concerning the division of pension credits and as a result the split was approved on September 5, 2019.<sup>3</sup>

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<sup>1</sup> GD2-6

<sup>2</sup> GD2-14

<sup>3</sup> GD3-2

## **What the Claimant must prove**

[6] For the Claimant to succeed, he must prove that there was a written agreement contemplating no division of unadjusted pensionable earnings upon the dissolution of marriage.<sup>4</sup>

## **Matters I have to consider first**

### **I accepted documents sent in after the hearing**

[7] At the hearing, the added party's daughter, attended and spoke for her. She advised me that the parties had a divorce agreement that contemplated CPP credits upon the dissolution of the marriage. I requested that she submit this document as it may be relevant to my decision. She did so shortly after the hearing. I then provided the Claimant with two weeks to respond. He did not provide a response. I have allowed this document into the record and rely upon it because it is material to my decision and dispositive of the issue under appeal.

## **Reasons for my decision**

[8] At issue, in this appeal is whether the Minister was correct in completing a division of unadjusted pensionable earnings.

[9] Section 55.2(2) of the CPP details that except as provided in subsection (3), where, on or after June 4, 1986, a written agreement between persons subject to a division under section 55 or 55.1 was entered into, or a court order was made, the provisions of that agreement or court order are not binding on the Minister for the purposes of a division of unadjusted pensionable earnings under section 55 or 55.1.

[10] The conditions in which a written agreement will bind the Minister are detailed in section 55.2(3) of the CPP.

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<sup>4</sup> Section 55.2(2) of the CPP sets out that except as provided in subsection (3), where, on or after June 4, 1986, a written agreement between persons subject to a division under section 55 or 55.1 was entered into, or a court order was made, the provisions of that agreement or court order are not binding on the Minister for the purposes of a division of unadjusted pensionable earnings under section 55 or 55.1.

[11] Section 55.2(3) of the CPP details the following:

(a) a written agreement between persons subject to a division under section 55 or 55.1 entered into on or after June 4, 1986 contains a provision that expressly mentions this Act and indicates the intention of the persons that there be no division of unadjusted pensionable earnings under section 55 or 55.1,

(b) that provision of the agreement is expressly permitted under the provincial law that governs such agreements,

(c) the agreement was entered into

(i) in the case of a division under section 55 or paragraph 55.1(1)(b) or (c), before the day of the application for the division, or

(ii) in the case of a division under paragraph 55.1(1)(a), before the rendering of the judgment granting a divorce or the judgment of nullity of the marriage, as the case may be, and

(d) that provision of the agreement has not been invalidated by a court order, that provision of the agreement is binding on the Minister and, consequently, the Minister shall not make a division under section 55 or 55.1.

[12] As detailed above, the Claimant and the Added Party were granted a judgment of divorce on March 15, 2009. On October 6, 2018, the Added Party applied for a division of unadjusted pensionable earnings. The Minister conducted an investigation, determined that there was no agreement in place that would preclude the granting of the division of unadjusted pensionable earnings, and as a result granted the application.

[13] I called a hearing and the Claimant did not attend. However, the Added Party, and her daughter did. I spoke to the daughter of the added party. She advised me that the parties had entered into an agreement respecting the division of unadjusted pensionable earnings.

[14] The relevant text of the agreement is set out at paragraph 3.1 of the settlement agreement. It reads as follows:

3.1 Subject to this Agreement, each party shall keep his or her own monies, savings, investments, insurance, Registered Retirement Savings Plans and pensions, excluding Canada Pension Plan pensionable credits. The Canada Pension Plan pensionable credits and benefits shall be divided pursuant to the terms of the Canada Pension Plan R.S.C. 1985 c. C8.<sup>5</sup>

[15] Not only does this particular article in the divorce settlement address the division upon dissolution of marriage, it specifically addresses that the disbursement of pension credits shall be divided pursuant to the Canada Pension Plan. In other words, it requires a division to occur as contemplated by the CPP and does not afford the Claimant with any avenue to deny the Added Party of the benefit she sought and was granted by the Minister.

[16] As a result, I am satisfied that the Claimant has no case and that his appeal should be dismissed.

## **Conclusion**

[17] I find that the Claimant isn't eligible to cancel the DUPE.

[18] This means the appeal is dismissed.

Adam Picotte  
Member, General Division – Income Security Section

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<sup>5</sup> GD5-3