



Citation: *DM v Minister of Employment and Social Development and MM*, 2021 SST 908

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: D. M.

Respondent: Minister of Employment and Social Development

Added Party: M. M.

Decision under appeal: Minister of Employment and Social Development reconsideration decision dated July 10, 2018 (issued by Service Canada)

Tribunal member: Shannon Russell

Type of hearing: Teleconference

Hearing date: November 15, 2021

Hearing participants: Added Party

Decision date: December 14, 2021

File number: GP-18-2375

Decision

[1] The appeal is withdrawn.

What the appeal was about

[2] This appeal was about a division of unadjusted pensionable earnings (sometimes called a DUPE or credit split). Specifically, the appeal was about the period of cohabitation between the Appellant and the Added Party. The parties disputed the date they began living together and they disputed the date of their separation.

[3] Although the appeal was about a DUPE or credit split, this decision is actually about the validity of a notice of withdrawal.

[4] The facts leading up to this decision are unusual, and so I will explain what happened.

What happened at the hearing

[5] This appeal was scheduled to be heard by teleconference on November 15, 2021 at 1:00 p.m. ET (or 10:00 a.m. PT). Aside from me, the only other person in attendance was the Added Party.

[6] The Minister did not send a representative to the hearing. This did not surprise me. The Minister is often unrepresented at hearings before the General Division's Income Security Section.

[7] I was surprised, however, that the Appellant was not at the hearing. After waiting several minutes for the Appellant to attend the hearing, I asked Tribunal staff to try to contact him to see if perhaps he was having difficulty connecting to the hearing. Tribunal staff made several attempts to reach the Appellant but they were not successful in contacting him.

[8] I decided to go ahead with the hearing. I did this because I was satisfied that the Appellant had received the Notice of Hearing.¹ I knew the Appellant had received the Notice of Hearing because he mentioned the hearing date in an email he sent to the Tribunal on November 10, 2021.²

What happened after the hearing

[9] After the hearing was concluded, a new document was uploaded to the file. The new document was an email the Appellant had sent to the Tribunal on the day of the hearing stating that he was withdrawing his appeal. According to the document, the Appellant sent the email to the Tribunal at 10:53 a.m.³

[10] On November 24, 2021, I wrote to the parties, and said this:⁴

I am attaching a document that was uploaded to this file after the hearing concluded on November 15, 2021. It appears the document was received by the Tribunal while the hearing was in progress. However, as it is not possible to upload documents to an appeal file immediately upon receipt, this document was uploaded (and thus made known to me) after the hearing.

Section 14 of the Social Security Tribunal Regulations states:

14. Withdrawal – (1) Subject to subsection (2), a person may withdraw their appeal or application at any time before a decision is rendered by filing a notice with the Tribunal.

¹ Section 12 of the *Social Security Tribunal Regulations* allows me to proceed with a hearing in a party's absence if I am satisfied that the party received the Notice of Hearing.

² Page GD24-1. I know the Appellant referred to the hearing date as November 15, 2022 rather than November 15, 2021. However, I considered his reference to "2022" to be a typo as the crux of his email was about him not having enough time to respond to a document that was recently filed by the Added Party.

³ Pages GD26-1 to GD26-3

⁴ Pages GD27-1 to GD27-3

(2) Exception – In the case of a hearing held by teleconference, videoconference, other means of telecommunication or the personal appearance of the parties, a party may not withdraw their appeal or application after the conclusion of the hearing.

Before I decide whether to accept the withdrawal, I would like to give the parties an opportunity to comment on it. If a party objects to the withdrawal, the party should clearly state so and explain why. If, on the other hand, a party does not object to the withdrawal, the party should advise of [same].

[11] On November 25, 2021, the Added Party wrote to the Tribunal and said she objected to the withdrawal. She did not raise any arguments about the validity of the withdrawal. Instead, she focused on her argument that she had provided evidence showing the correct dates of cohabitation.⁵

[12] On December 1, 2021, the Appellant wrote to the Tribunal and explained that he had actually emailed his withdrawal to the Tribunal on November 15, 2021 at 7:53 a.m. and not 10:53 a.m. To support his statement, he attached a copy of the email he sent showing the time as 7:53 a.m. The Appellant thus pointed out that he filed his withdrawal **before** the start of the hearing.⁶

[13] The Minister did not reply to my letter of November 24, 2021.

The Appellant filed his withdrawal before the start of the hearing

[14] I accept that the Appellant sent his notice of withdrawal to the Tribunal on November 15, 2021 at 7:53 a.m. PT (and not 10:53 a.m. PT).

⁵ Pages GD28-1 to GD28-2

⁶ Pages GD29-1 to GD29-6

[15] The Appellant lives in British Columbia and so there is a 3-hour time difference between British Columbia and Ontario (where the Tribunal's office is). I asked Tribunal staff to confirm if the time on an email automatically converts to ET upon receipt at the Tribunal. I was told it does. This means the Appellant filed his withdrawal before the start of the hearing.

The appeal is withdrawn

[16] It is unfortunate that I did not learn of the Appellant's withdrawal until after the hearing on November 15, 2021.

[17] However, the evidence shows the Appellant filed his withdrawal before the hearing and so he was within his right to withdraw the appeal.

[18] I know this will likely be frustrating to the Added Party. After all, she attended the hearing and participated throughout, presumably in hopes of having the dispute resolved.

[19] However, section 14 of the *Social Security Tribunal Regulations* does not require an appellant to obtain the consent of other parties before withdrawing the appeal. Section 14 also does not require an appellant to obtain leave (or permission) from the Tribunal to withdraw an appeal. Once a withdrawal is received, the file is closed.⁷

Conclusion

[20] The Appellant has withdrawn the appeal. This means the file is closed.

Shannon Russell

Member, General Division – Income Security Section

⁷ This is explained in *Philipos v. Canada (Attorney General)*, 2016 FCA 79 at paragraph 8. Although *Philipos* dealt with a notice of discontinuance, the words “discontinue” and “discontinuance” in the courts mean the same thing as “withdraw” and “withdrawal” at tribunals (*CE v. Canada Employment Insurance Commission* and *X*, 2021 SST 25 (CanLII)).