



Citation: *ZM v Minister of Employment and Social Development*, 2022 SST 384

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

**Decision**

**Appellant:** Z. M.

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

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**Decision under appeal:** Decision of the General Division of the Social Security Tribunal of Canada dated August 11, 2021

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**Tribunal member:** George Tsakalis

**Type of hearing:** On the record

**Decision date:** February 4, 2022

**File number:** GP-21-2362

## Decision

[1] The Appellant's application to rescind or amend the August 11, 2021 decision of the Social Security Tribunal's General Division is dismissed. The Appellant failed to establish new material facts.

[2] This decision explains why I am dismissing the application.

## Overview

[3] The Appellant applied for a Canada Pension Plan (CPP) disability pension in February 2017. The Minister of Employment and Social Development (the Minister) approved his application. The Appellant began receiving a CPP retirement pension in May 2020, having reached 65 years of age.

[4] The Appellant asked the Minister to reconsider the amount of his CPP retirement pension. The Appellant argued that the Minister calculated his retirement pension amount based on a contributory period that began in 1973. The Appellant believed the Minister should not have done this because he had only immigrated to Canada in February 1996 and could not make CPP contributions until February 1996.<sup>1</sup>

[5] The Minister maintained its original decision regarding the amount of the Appellant's retirement pension.<sup>2</sup>

[6] The Appellant appealed the Minister's reconsideration decision to the General Division. A hearing took place on August 10, 2021. The Tribunal dismissed the Appellant's appeal on August 11, 2021.

[7] The Tribunal made the following findings:

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<sup>1</sup> See GD2-11

<sup>2</sup> See GD2-12-15

- The Minister followed the legislation and properly calculated the Appellant's contributory period<sup>3</sup>;
- The Tribunal rejected the Appellant's argument that his inability to work in Canada should be treated in the same manner as the CPP disability pension drop-out factor. The Appellant made no contributions to the CPP for the period of 1973 to 1996, and the CPP contained no provision to apply a drop-out factor in the manner suggested by the Appellant<sup>4</sup>;
- The Appellant was not entitled to a higher CPP retirement pension.<sup>5</sup>

[8] The Appellant requested leave to appeal at the Tribunal's Appeal Division. The Tribunal's Appeal Division denied the Appellant's leave request.

[9] The Appellant also filed an Application to Rescind or Amend under section 66 of the *Department of Employment and Social Development Act* (DESD Act) to reopen the General Division's decision.

[10] The Minister says this application should be dismissed because the Appellant failed to establish new material facts. The Minister says the information the Appellant submitted in support of this application was known to the Tribunal and fails to meet the criteria for new facts.<sup>6</sup>

[11] The Appellant says that the information he has provided would have affected the results of the previous hearing.<sup>7</sup>

## Issue

[12] Has the Appellant established new material facts?

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<sup>3</sup> See General Division decision at paragraph 14

<sup>4</sup> See General Division decision at paragraphs 14 to 15

<sup>5</sup> See General Division decision at paragraph 16

<sup>6</sup> See RA2-7

<sup>7</sup> See RA1-8

## Analysis

[13] I may amend or rescind the General Division decision if the Appellant presents a new material fact that could not have been discovered at the time of the hearing with the exercise of reasonable diligence.<sup>8</sup>

[14] There is a two-part test for evidence to be admissible as a new material fact:

- The evidence must establish a fact that existed at the time of the original hearing but was not discoverable before the original hearing by the exercise of reasonable diligence (the “discoverability test”), and
- The evidence must reasonably be expected to affect the results of the prior hearing (the “materiality test”).<sup>9</sup>

[15] A “rehash” of old evidence considered by the previous decision maker fails to meet the criteria for new facts.<sup>10</sup>

### **The Appellant failed to establish new material facts**

[16] The Appellant submitted the following documents in support of his application:

- A copy of his Social Insurance Number (SIN) Application dated February 15, 1996<sup>11</sup>;
- An intranet copy of his CPP contributions<sup>12</sup>;
- Earnings Details<sup>13</sup>;
- A transcript of the August 10, 2021 Tribunal hearing<sup>14</sup>;

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<sup>8</sup> Paragraph 66(1)(b) of the DESD Act

<sup>9</sup> See *Canada (Attorney General) v. MacRae*, 2008 FCA 82

<sup>10</sup> See *Taylor v. Canada* (MHRD), 2005 FCA 293

<sup>11</sup> RA1-9

<sup>12</sup> RA1-10-11

<sup>13</sup> RA1-12-13

<sup>14</sup> RA5-7-16

- A letter from the Minister dated October 28, 2021<sup>15</sup>

[17] The Appellant argues that the Statement of Contributions used for his pension calculations state “zero” values in the cells under the columns Contributions and Pensionable Earnings for the period 1973 to 1995. He says this should not be the case because his CPP file did not exist and no records were available during that time. He provided the Tribunal with copies of his contributions and earnings that he obtained from the Service Canada Intranet. The Appellant says the documents he submitted proves that his records started in 1996. He says the Minister had access to these documents when they calculated his retirement pension. He says that his Statement of Contributions from 1973 to 1995 show no records and should not have a “zero” value. He argues that his pension should be recalculated on the basis that the years 1973 to 1995 should be dropped out of his contributory period, as he had previously argued before the General Division.<sup>16</sup>

[18] I agree with the Minister that the documents the Appellant submitted do not constitute new material facts.

[19] The Appellant’s SIN Application would not reasonably be expected to affect the outcome of his previous hearing at the General Division. The General Division member was aware of the Appellant’s contribution history.

[20] The CPP contributions and earnings details the Appellant provided also do not constitute new material facts. The General Division already had a copy of the Appellant’s Statement of Contributions, which shows he started making CPP contributions in 1996.<sup>17</sup> The General Division member considered this evidence and concluded that there was no provision in the CPP to apply a drop-put factor in the manner suggested by the Appellant.<sup>18</sup>

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<sup>15</sup> See RA5-38-39

<sup>16</sup> See RA1-6

<sup>17</sup> See GD2-16-17

<sup>18</sup> See General Division decision at paragraph 14

[21] The transcript of the previous General Division hearing is not a new material fact. The Appellant seems to suggest he did not have a fair hearing.<sup>19</sup> A transcript is generally not evidence. I do not have jurisdiction in an application to rescind or amend to review whether a previous hearing was conducted fairly. My jurisdiction in an application to rescind or amend is to determine whether an Appellant has established a new material fact. If the Appellant felt the previous hearing was unfair, his remedy is to seek leave to appeal the decision to the Appeal Division. The Appeal Division dismissed his arguments that he had an unfair hearing.<sup>20</sup>

[22] The October 28, 2021 letter from the Minister that the Appellant provided also does not constitute a new material fact. It does not affect the outcome of the previous General Division decision. This is because the letter confirms that the Appellant's contributory period began in 1973 and the previous Tribunal member made a finding that the Appellant's contributory period began that year.<sup>21</sup>

[23] The Appellant had previously argued before the General Division that his contributory period should indicate "no date" instead of "0" contributions before he began contributing to the CPP in 1996. This is because he worked in another country. The Appellant raised the same argument in this application.<sup>22</sup> The previous General Division member considered these arguments and rejected them.

[24] An application to rescind or amend is not an opportunity for an Appellant to reargue the merits of their case.<sup>23</sup> An application to rescind or amend is an opportunity for an Appellant to establish a new material fact that could not have been discovered by the exercise of reasonable diligence and would have affected the outcome of a previous decision. The Appellant did not present such evidence in this application.

[25] The Appellant also suggested there were procedural irregularities at the Appeal Division because the Appeal Division decided his leave application before this

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<sup>19</sup> See RA5-13

<sup>20</sup> See *ZM v. Minister of Employment and Social Development*, 2021 SST 658

<sup>21</sup> See General Division decision at paragraph 12

<sup>22</sup> See RA1-6

<sup>23</sup> See *R.B. v. Minister of Employment and Social Development*, 2019 SST 29

application proceeded. I have no jurisdiction to make any ruling on what happened at the Appeal Division. My jurisdiction is to consider whether the Appellant established new material facts. What the Appellant did was rehash arguments that have already been rejected. He showed me no new evidence to suggest the previous General Division decision should be reopened.

## **Conclusion**

[26] I find that the Appellant failed to establish a new material fact within the meaning of the DESD Act

[27] The application to rescind or amend is dismissed.

George Tsakalis  
Member, General Division – Income Security Section