



Social Security
Tribunal of Canada

Tribunal de la sécurité
sociale du Canada

Citation: *RD v Minister of Employment and Social Development and MB*, 2022 SST 980

Tribunal File Number: GP-19-767

BETWEEN:

R. D.

Appellant (Claimant)

and

Minister of Employment and Social Development

Minister

and

M. B.

Added Party

SOCIAL SECURITY TRIBUNAL DECISION
General Division – Income Security Section

Decision by: Kelly Temkin

Teleconference hearing on: May 31, 2021

Date of decision: June 2, 2021

DECISION

[1] The Division of Unadjusted Pensionable Earnings (DUPE) was performed in accordance with the Canada Pension Plan (CPP) and cannot be cancelled.

[2] The appeal is dismissed. Here are my reasons.

OVERVIEW

[3] The Added Party, M. B., applied for a DUPE on April 9, 2018. The Claimant, R. D. and the Added Party lived together as common-law partners from August 1, 2005 until they were married on March 25, 2006. They cohabited together until August 31, 2015 and divorced on October 23, 2016. The DUPE was performed on December 8, 2018 for the years 2006 to 2014.¹ The Claimant requested that the DUPE be reversed and the pension credits returned to him. The Minister's reconsideration decision was that the DUPE was permanent and the credits could not be returned. The Claimant appealed to the Social Security Tribunal (Tribunal).

[4] The Claimant's request an exemption from credit splitting because of his financial circumstances² and that the Added Party agreed to take no further action against the division of property following their divorce. He does not dispute the period of cohabitation.

[5] In this appeal I have to decide whether I can cancel the credit split.

PRELIMINARY MATTER

[6] The Added Party was unable to join the hearing on May 12, 2021 due to a language barrier. For this reason, I reconvened the hearing to May 31, 2021 so that all parties could have a chance to fully participate.

ANALYSIS

[7] According to the CPP, a DUPE also known as a credit split, is mandatory for divorced spouses once the Minister has been informed of the divorce judgment and received sufficient

¹ GD4-2

² GD1-1, GD1-8 and GD1-10.

information about the marriage and its dissolution.³ The Federal Court of Appeal has recognized that credit splitting is mandatory under these circumstances.⁴

The exceptions to the rule that the credit split is mandatory do not apply in this case

[8] There are two exceptions to the rule.⁵ One exception applies when the amount of benefits paid to both former spouses decreased at the time the credit split was made.⁶ In this case, neither party is presently receiving a CPP benefit but the pension credits have increased or remained the same for the Added Party in all years subject to the DUPE. This exception does not apply.

[9] The other exception concerns spousal agreements (such as a separation agreement) expressly opting out of the DUPE in the provinces of Quebec, Saskatchewan, Alberta and British Columbia.⁷ The Claimant submits that the Added Party agreed not to take any further action towards a division of property following their divorce, although he did not get any paper confirming this from the Added Party. The Minister submits that because the separation and divorce took place in the province Ontario, this exception does not apply.⁸ The parties do not dispute they lived, separated and divorced in Ontario. Even if the Claimant had presented me with the parties agreement in writing not to split the credits, I agree that this exception does not apply.

[10] Because the Minister was informed of the divorce judgment and received the necessary information about the marriage and its dissolution, the credit split and its effects are mandatory and permanent and cannot be withdrawn.

[11] At the hearing, both parties asked me to take into consideration their personal circumstances when reaching my decision. The Added Party described her difficulties surrounding the divorce. The Claimant asked me to consider his financial situation when reaching my decision. I have no authority to reverse the credit split as requested. I have no

³ paragraph 55.1(1)(a) of the CPP and s. 54(2) of the CPP Regulations

⁴ *Conkin.v.Canada (Attorney General)*, 2005 FCA 251, at para 3

⁵ This applies to spouses that divorce on or after January 1, 1987

⁶ subsection 55.1 (5)of the CPP and s. 46(3) of the CPP Regulations

⁷ subsection 55.2(3) of the CPP

⁸ GD6-7

authority to override clear statutory provisions based on fairness, compassion, or extenuating circumstances, but must follow the provisions of the CPP.

CONCLUSION

[12] The appeal is dismissed

Kelly Temkin
Member, General Division - Income Security