



[TRANSLATION]

Citation: *DP v Minister of Employment and Social Development*, 2022 SST 942

Social Security Tribunal of Canada Appeal Division

Decision

Appellant:	D. P.
Respondent:	Minister of Employment and Social Development
Representative:	J. Toews

Decision under appeal:	General Division decision dated April 5, 2022 (GP-21-2384)
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Tribunal member:	Jude Samson
Type of hearing:	On the record
Decision date:	September 23, 2022
File number:	AD-22-377

Decision

[1] D. P. is the Applicant in this case. I am dismissing her appeal. She isn't entitled to a pension credit split under the *Canada Pension Plan* (CPP).

Overview

[2] The Applicant applied for a CPP pension credit split in March 2020.¹ In her application, she said that the common-law relationship between her and her former spouse had ended in October 2013.

[3] The Minister of Employment and Social Development (Minister) refused the application, saying that the Applicant had applied late. According to the Minister, the application had to be made within four years after the couple's relationship had ended.

[4] The Applicant appealed the Minister's decision to the Tribunal's General Division. The General Division summarily dismissed the appeal. In summary, the General Division found that the Applicant's appeal had no reasonable chance of success and that it could make its decision without a hearing.

[5] The Applicant is now appealing the General Division's decision to the Appeal Division.

[6] The Applicant hasn't established an error that could justify my intervention in this case. I therefore have no choice but to dismiss her appeal.

Issue

[7] In my decision, the issue before me is this: Did the General Division make an error in ignoring the order of the New Brunswick Court of Queen's Bench dated February 21, 2017?²

¹ The application starts at GD2-4 in the appeal record.

² This order—endorsing a separation agreement signed by the parties—starts at GD2-10.

[8] More specifically, section 11 of this order reads as follows: [translation] “Each of the parties may apply to split pensionable credits under the *Canada Pension Plan* with respect to accumulated credits.”³

Analysis

[9] The Appeal Division can intervene in this case only if the General Division made an error under the law.⁴ The Appeal Division doesn’t give the Applicant a chance to re-argue her case.

The General Division summarily dismisses an appeal when it has no reasonable chance of success

[10] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.⁵ In other words, is it plain and obvious on the face of the record that the appeal is bound to fail?

[11] The question isn’t whether the Tribunal must dismiss the appeal after considering the facts, case law, and parties’ arguments. Instead, the question is whether the appeal is bound to fail no matter what evidence or arguments the Applicant might have presented at a hearing.⁶

The Minister is required to split the pension credits in certain situations

[12] The Minister must split pension credits if the application is made:⁷

- within four years after the day the former common-law partners started living separately

³ See GD2-15.

⁴ Section 58(1) of the *Department of Employment and Social Development Act* (DESD Act) sets out these errors (or “grounds of appeal”).

⁵ See section 53(1) of the DESD Act; and *Miter v Canada (Attorney General)*, 2017 FC 262.

⁶ See *Papouchine v Canada (Attorney General)*, 2018 FC 1138 at paragraph 26.

⁷ See section 55.1(1)(c)(ii) of the *Canada Pension Plan*.

- after the end of that four-year period, with the parties' agreement

The General Division didn't make an error in summarily dismissing the appeal

[13] While I have great sympathy for the Applicant, her appeal is bound to fail.

[14] The essential facts of the case aren't in dispute. The Applicant and her former spouse were in a common-law relationship from June 1994 to October 2013.⁸ The Applicant applied for a pension credit split in March 2020, long after the end of the four-year period set out in the law. There was no agreement between the Applicant and her former spouse to split pension credits.

[15] Nothing in the law allows the General Division to ignore the rules about the approval of a pension credit split. The Applicant hasn't met the time requirements for applying for a pension credit split.

[16] The Applicant says that the Court order has no deadline and that she could not apply before the date of the order because she didn't know whether she was entitled to it.

[17] The Court order doesn't allow the Minister to ignore the terms of the CPP. On the contrary, the split must be done under the terms of the CPP. Furthermore, the CPP establishes the Applicant's entitlement to a pension credit split, not the Court order.

[18] The Applicant also notes that she paid a lawyer a fairly high fee to make sure that her separation was handled appropriately. The Applicant can therefore sue her lawyer for failing to properly advise her.

[19] I understand the Applicant's disappointment over this situation. However, my authority is limited to the question of whether the General Division made an error in

⁸ The date of October 2013 is from the Applicant's application (GD2-3). I acknowledge that the separation agreement between the parties says that the parties have been separated since December 2013. This difference has no impact on the outcome of the case.

summarily dismissing her appeal. The Tribunal can't rewrite or circumvent the law, even in very sympathetic situations.

Conclusion

[20] I am dismissing the Applicant's appeal. The General Division didn't make an error in summarily dismissing the appeal.

Jude Samson
Member, Appeal Division