



Citation: *BG v Minister of Employment and Social Development*, 2022 SST 816

Social Security Tribunal of Canada Appeal Division

Decision

Appellant (Claimant): B. G.

Respondent: Minister of Employment and Social Development
Representative:

Decision under appeal: General Division decision dated June 3, 2022
(GP-22-716)

Tribunal member: Kate Sellar

Type of hearing: On the Record
Decision date: August 19, 2022
File number: AD-22-406

Decision

[1] I am dismissing the appeal. The Claimant's credit split was mandatory. The General Division could not cancel it for her. These reasons explain why.

Overview

[2] B. G. (the Claimant) applied for a Canada Pension Plan (CPP) credit split (also called a Division of Unadjusted Pension Earnings, or DUPE) in June 2021.

[3] She asked the Minister of Employment and Social Development (Minister) to cancel or reverse the credit split. She said that when she applied for the credit split, she wanted to see if her ex-husband's CPP contributions would help her, but it made her CPP situation worse.

[4] The Minister refused to cancel or reverse the credit split. The Claimant appealed to this Tribunal. The General Division summarily dismissed the Claimant's appeal without a hearing. The General Division decided that the Claimant's appeal had no reasonable chance of success.

[5] The General Division explained that it could not cancel the credit split for the Claimant because the *Canada Pension Plan* says the Minister **must** complete the credit split (once they have the required information) in cases where the claimant gets divorced after 1987. The law doesn't give the Minister or the General Division the power to cancel or reverse the Claimant's credit split either.

[6] I must decide whether the General Division made an error under the *Department of Employment and Social Development Act* (Act) by summarily dismissing the Claimant's appeal.

[7] The General Division did not make an error. I am dismissing the appeal.

Issue

[8] Did the General Division make an error under the Act by dismissing the Claimant's appeal as having no reasonable chance of success?

Analysis

[9] In this decision, I will explain:

- my role in reviewing General Division decisions and which types of errors I can consider;
- what summary dismissal is;
- how credit splits work;
- how I have decided that the General Division did not make any error by summarily dismissing the Claimant's appeal about her credit split.

Reviewing General Division decisions

[10] The Appeal Division doesn't give the Claimant and the Minister a chance to re-argue the case from the beginning. Instead, the Appeal Division reviews the General Division's decision to decide if it contains errors. That review is based on the wording of the Act.

[11] The Act describes four types of errors that the Appeal Division can address: errors of fact, errors of law, errors made because the General Division did not provide a fair process, and errors made about what the General Division has the power to decide.¹

Summary Dismissal

[12] The General Division must summarily dismiss an appeal if it is satisfied that the appeal has no reasonable chance of success.² The issue is whether it is plain and obvious on the record that the appeal is bound to fail. The question is **not** whether the Tribunal must dismiss the appeal after considering the facts, the case law, and the

¹ See section 58 of the *Department of Employment and Social Development Act* (Act).

² See section 53(1) of the Act; see also the Federal Court's decision in *Miter v Canada (Attorney General)*, 2017 FC 262.

parties' arguments. Instead, the question is whether the appeal is destined to fail regardless of the evidence or arguments that the claimant might provide at a hearing.³

Credit Splits

[13] Applying the CPP pension credit split requires that the unadjusted pensionable earnings for each person be added together during the time they lived together, divided equally, and then attributed equally to each person.

[14] After the Minister applies the credit split, the Minister recalculates the amount of the CPP retirement pension for each person.

[15] As the General Division explained, the *Canada Pension Plan* says that once the Minister is informed of a divorce, and the divorce happened after January 1, 1987, the credit split is mandatory.⁴

[16] Once the Minister splits the credits, the Minister cannot reverse the credit split unless it is satisfied that the pension is payable to both people and the amount of benefits for both people would decrease at the time of the credit split.⁵

[17] The Federal Court has confirmed that the credit split is automatic and mandatory once the Minister is notified of a divorce “even if one of the parties is deceased and the split results in a disadvantage and reduced pension to the living spouse.”⁶

No error by summarily dismissing the appeal

[18] The General Division did not make an error under the Act by summarily dismissing the Claimant's appeal. The General Division applied the facts to the law, and the Claimant's appeal was bound to fail.

[19] The Claimant has provided good reasons for needing the Minister to reverse the credit split. She says that the General Division failed to provide her with a fair process

³ The Tribunal explained this in a case called *AZ v Minister of Employment and Social Development*, 2018 SST 298.

⁴ See section 55.1(1) of the *Canada Pension Plan*.

⁵ See section 55.1(5) of the *Canada Pension Plan*.

⁶ See *Dela Cruz v Canada (Attorney General)*, 2020 FC 744.

because it didn't consider all the important facts about her situation. The Claimant lives paycheque to paycheque. When her ex-husband died, he was receiving social assistance in Ontario for people with disabilities. She says he agreed that he would never touch her CPP retirement entitlements. She argues that after her ex-husband died, Service Canada and her MP gave her advice that if she was in dire need financially, the credit split wouldn't happen.⁷ She also explains that Service Canada told her that the credit split would not have to happen because her ex-husband died.

[20] But when you apply the *Canada Pension Plan* to the facts of the Claimant's appeal, you reach two conclusions. First, the credit split was mandatory. Second, the Minister cannot reverse the credit split.

[21] The General Division did not ignore or misunderstand any of the key facts in the Claimant's appeal in terms of the dates for her divorce and the date that her ex-husband died.

[22] The Claimant's credit split in December 2021 was mandatory because the Minister was informed of the divorce, and the divorce happened after January 1, 1987.⁸

[23] The Minister could not reverse the Claimant's credit split. The split is mandatory on the Minister receives the information described in the law. The Minister has the discretion to refuse or cancel the credit split, but can only even consider doing that when the benefit is payable to both people. The Claimant's arguments are hypothetical because we don't know if benefits would have been payable to her ex-husband and whether both of the benefits would have decreased with the credit split. The credit split took place in in December 2021, the Claimant's ex-husband had already died (he died in December 2020). The Minister cannot reverse the credit split because the pension was only payable to the Claimant.

⁷ See AD1-2.

⁸ See paragraphs 13 and 14 in the General Division decision.

[24] The facts that the Claimant argues were the most important are about why she needed the Minister to reverse the split, and about the incorrect information she says she got from Service Canada about the credit split.

[25] But the General Division had to apply the law, and those facts don't help the Claimant to show that the Minister can reverse the credit split. The Claimant's appeal doesn't fall into the category of claimants who the Minister can consider for reversing a credit split.

[26] Although the Claimant checked the box in her appeal stating that the General Division failed to provide her with a fair process, her arguments focus on whether the outcome was fair given all of the facts.

[27] The General Division gave the Claimant a fair chance to make her arguments and explain her appeal, so there is no failure to provide a fair process.⁹ Unfortunately, the Claimant's arguments in favour of reversing the pension are bound to fail.

[28] The Claimant is frustrated because if her ex-husband were alive, she believes that both of their pensions would have reduced and the Minister would have reversed the credit split.

[29] I don't have the ability to change the outcome for the Claimant based on either her allegations that she relied on bad advice from Service Canada, or based on her financial need.

Incorrect advice or administrative error

[30] The *Canada Pension Plan* says that when the Minister is satisfied that Claimant has been denied part of benefit (like a part of the retirement pension) as a result of incorrect advice or an administrative error, the Minister shall take action to put the

⁹ What fairness requires in each case depends on the circumstances. The Claimant needs to receive a fair chance to make arguments on every fact or factor likely to affect the decision. These ideas come from *Baker v Canada (Minister of Citizenship and Immigration)* 1999 CanLII 699, and *Kouama v Canada (Minister of Citizenship and Immigration)*, 1998 CanLII 9008.

person in the position they would have been if that bad advice or error hadn't happened.¹⁰

[31] The Claimant says that she received bad advice about the credit split before she provided the information about her divorce to the Minister after her ex-husband died. The Tribunal doesn't have jurisdiction to decide whether the Claimant's credit split was the result of incorrect advice given by the Minister. If the Claimant argues that the credit split resulted from incorrect advice, she can contact Service Canada to ask about the process for addressing that.

Conclusion

[32] I dismiss the appeal. The General Division did not make an error.

Kate Sellar

Member, Appeal Division

¹⁰ See section 66(4) of the *Canada Pension Plan*.