



Citation: *CD v Minister of Employment and Social Development*, 2022 SST 1310

Social Security Tribunal of Canada General Division – Income Security Section

Decision

Appellant: C. D.

Respondent: Minister of Employment and Social Development

Decision under appeal: Minister of Employment and Social Development
reconsideration decision dated October 13, 2021 (issued
by Service Canada)

Tribunal member: Jackie Laidlaw

Type of hearing: Teleconference

Hearing date: August 9, 2022

Hearing participants: Appellant

Decision date: August 12, 2022

File number: GP-21-2600

Decision

[1] The appeal is dismissed.

[2] The Appellant, C. D., isn't eligible for a *CPP* Division of Unadjusted Pensionable Earnings (DUPE or credit split) with D. T. This decision explains why I am dismissing the appeal.

Overview

[3] The Appellant was the common-law spouse of D. T. from August 1993 until September 2016. They separated in September 2016. She applied for the DUPE on March 29, 2021. D. T. did not waive the provision of the CPP to allow for the DUPE to take place after four years from separation.

[4] The Appellant says that due to COVID she was unable to enter the Service Canada premises in order for her to apply for the benefit. She attempted to file within the allotted time in May 2020. She states that it is morally and ethically wrong to deny her because of a timeline she could do nothing about.

[5] The Minister says the legislation is clear that a common-law couple has four years from the date of separation to file for the DUPE. If they wish to file after that period, both parties must agree in writing to the filing. The Appellant filed after the four-year period and her former spouse did not agree. She is not entitled to the DUPE.

What the Appellant must prove

[6] For the Appellant to succeed, she must prove she either filed for a DUPE within four years of separation from D. T., or that D. T. has agreed in writing to the filing of the DUPE.

Reasons for my decision

[7] There is no dispute that D. T. did not agree to the Appellant filing for the DUPE.

[8] The Appellant testified that she was aware of the DUPE through friends, and wanted to wait to file for OAS, DUPE and a DUPE on her previous marriage from 1980 to 1987 all at the same time.

[9] As such, she was aware of the timeline. She stated she was allowed to wait, which I do not dispute. However, by doing so she risks any complications that may arise which would affect the filing. This is what happened.

[10] The Appellant is claiming she was prevented from filing for the DUPE in May 2020 due to COVID, causing the Service Canada offices to close. I note that her four-year period ended September 2020, four months later. She had nearly four years to apply. I do not accept that she was unable to apply because she could not get into the offices. There were a number of other options for the application. She could have applied online. She stated she did not have a proper computer and the libraries were closed. She could have mailed the application. She did not.

[11] Her reason for wanting to apply in person was to get help with the application. She had almost four years to receive this help. As well, the phone lines to Service Canada were always open. I agree there were difficulties getting through, as the offices were closed causing the phone lines to be more busy. But they were open, and available.

[12] The Appellant attempted once before the four-years were up to go to Service Canada in person and apply. She had an obligation to file within the four years and did not use the many resources and avenues available to do so.

[13] The Tribunal does not have the power to alter the legislation. I agree with the Minister that the legislation is clear she must apply within four years of separation from her common-law spouse. She did not.

[14] Because she did not apply within the legislated time-line, and her common-law spouse did not waive the time-line provision, she is not eligible for a DUPE with D. T.

Conclusion

[15] I find that the Appellant isn't eligible for *CPP* Division of Unadjusted Pensionable Earnings with D. T.

[16] This means the appeal is dismissed.

Jackie Laidlaw
Member, General Division – Income Security Section