



Citation: *JA v Minister of Employment and Social Development*, 2023 SST 1280

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: J. A.

Respondent: Minister of Employment and Social Development
Representative: Viola Herbert

Decision under appeal: General Division decision dated December 30, 2022
(GP-21-2149)

Tribunal member: Neil Nawaz

Type of hearing: In Writing

Decision date: September 15, 2023

Corrigendum date: October 20, 2023

File number: AD-23-305

Decision

[1] I am dismissing this appeal. The Appellant isn't entitled to an increase in his Canada Pension Plan (CPP) retirement pension.

Overview

[2] The Appellant began receiving a CPP disability pension in September 2006. His disability benefit was converted to a CPP retirement pension in October 2014, the month following his 65th birthday. This reduced the amount of his monthly benefits.

[3] The Appellant requested reconsideration of the amount of his monthly CPP retirement pension. The Minister maintained that the Appellant's retirement pension was calculated correctly. The Minister said that, when the Appellant's retirement pension became payable, the numbers on his record of earnings (ROE) were final, because more than four years had passed since they were entered.

[4] The Appellant appealed the Minister's decision to the Social Security Tribunal. The Appellant questioned the accuracy of the earnings posted in his ROE. He claimed that he was entitled to an increase in his CPP retirement pension because the Minister improperly recognized refunds that he had received for overpayments that he made over three years.

[5] The Tribunal's General Division held a hearing by videoconference and dismissed the appeal. It found that the Minister had not made an error in its calculation of the Appellant's CPP retirement pension. It also found that he also had not rebutted the presumption that an ROE is accurate.

[6] The Appellant then asked the Appeal Division for permission to appeal. Among other things, he alleged that the General Division contradicted itself about earnings and contribution refunds that he received in 1988, 1989, and 1998.

[7] In April, one of my colleagues on the Appeal Division granted the Appellant permission to appeal because she thought he had raised at least an arguable case. At

the Appellant's request, I conducted a hearing based on a review of the documents on file.

[8] Now that I have considered submissions from both parties, I have concluded that the Appellant is not entitled to an increase in his CPP retirement pension.

Preliminary Matter

[9] On December 5, 2022, the law governing the appeals to the Social Security Tribunal changed.¹ Under the new law, the Appeal Division, once it has granted permission to proceed, must now hold a de novo, or fresh, hearing about the same issues that were before the General Division. As I explained at the outset of the hearing, that meant I would not be bound by any of the General Division's findings. I also made it clear that I would be considering all available evidence, including new evidence, about the Appellant's entitlement to an increased retirement pension.

Issue

[10] In this appeal, I had to decide whether the Minister calculated the Appellant's CPP retirement pension correctly.

Analysis

[11] I have applied the law to the available evidence and concluded that the Appellant's retirement pension was calculated in accordance with the law.

The ROE is presumed to be correct

[12] The amount of a Claimant's CPP retirement pension is based on numbers from their ROE, a document that, in turn, is compiled with data that comes from the Canada Revenue Agency (CRA). According to section 97(1) of the CPP, "any entry in the record of earnings relating to the earnings or a contribution of a contributor shall be

¹ See section 58.3 of the *Department of Employment and Social Development Act*. This appeal is subject to the new law, because the Minister's application for permission to appeal was filed with the Tribunal on March 27, 2023, after the new law came into force.

conclusively presumed to be accurate and may not be called into question after four years have elapsed from the end of the year in which the entry was made.”²

[13] This provision means that it is up to the Appellant to show that his ROE contains inaccuracies. Under section 97(2) of the CPP, the Minister “may” correct an ROE if she comes into information that that the amounts on it are too low. However, use of the word “may” suggests that the Minister’s power to make such corrections is discretionary—that is, she doesn’t have to do it if she doesn’t want to. Unfortunately for the Appellant, this Tribunal doesn’t have the authority to force the Minister to alter or reverse her discretionary decisions. That means I can’t impute contributions that don’t appear in the Appellant’s ROE or correct it myself.³

The Appellant has not shown that his ROE is inaccurate

[14] The Appellant claims that he has higher earnings and contributions for 1988, 1989, and 1998 than are reported on his ROE.⁴ He maintains that, while he had refunds for those years, he still had the maximum earnings and contributions for those years. He argues that his retirement pension should reflect those higher earnings and contributions.⁵

[15] However, the Appellant had an opportunity to correct his ROE and was unable to do so. He asked the Minister to revisit his reported earnings and contributions, but she evidently saw no reason to take action. He was advised to make an application to the CRA to revise or update its records, but there is no documented evidence that he followed through with that advice.

[16] For these reasons, the Appellant has not rebutted the presumption that his ROE is correct. The Minister calculated the Appellant’s monthly CPP retirement pension with reference to the ROE on file, and I will do the same here.

² See CPP, section 97(1).

³ See *Minister of Social Development v Menard* (July 14, 2006) CP 22041 (PAB).

⁴ The Appellant’s ROE, generated by Service Canada on October 28, 2021, can be seen at GD2-6.

⁵ See Appellant’s application for leave to appeal to the Appeal division, AD1.

The Appellant's retirement pension was calculated properly

[17] Drawing on the Appellant's ROE, the Minister calculated his CPP retirement pension according to the law.

– The Appellant's contributory period began in October 1967 and ended in October 2014

[18] The amount of a retirement pension is based on the valid pensionable earnings and related contributions that a claimant makes to the CPP during their contributory period. The contributory period begins the later of:

- (a) January 1, 1966, or
- (b) the month after the claimant's 18th birthday,

and ends the earliest of:

- (a) the month prior to the effective date of the claimant's retirement pension,
- (b) the month of the claimant's 70th birthday, or
- (c) the month of the claimant's death.⁶

[19] In the Appellant's case, his contributory period began in October 1967, the month after his 18th birthday, and ended in October 2014, the month before his retirement pension began. That totalled 564 months.

– The Appellant's adjusted pensionable earnings totalled \$1,336,80512

[20] A claimant's pensionable earnings are the amount of earnings above the year's basic exemption and below the maximum amount on which the claimant contributes to the CPP. The earnings for each year are adjusted into current dollar values using a factor based upon the maximum pensionable earnings for the year.⁷

⁶ See CPP, section 49.

⁷ See CPP, sections 43, 50, and 51.

[21] Based on this information, the Minister determined that the Appellant's adjusted pensionable earnings from 1967 to 2006 totalled \$1,336,805~~12~~.⁸ His CPP disability pension and, later, his retirement pension were calculated using this amount.

[22] I have reviewed the information and the method by which the Minister calculated the Appellant's adjusted pensionable earnings. I see nothing to indicate that she made an error or departed from the law.

– The Appellant's contributory period is subject to reductions

[23] For the purpose of calculating a retirement pension, the law allows a claimant to drop certain periods from their contributory periods:

- Any months in which the claimant received a CPP or Quebec Pension Plan disability benefit;
- Any months in which the claimant stopped working or their earnings were reduced while raising a child under the age of seven;
- Any low-earning months after the age of 65;
- The general drop-out provision—15 percent of the claimant's lowest earning years in their contributory period.⁹

[24] The Appellant qualifies for the following exclusions:

- Disability exclusion – The Claimant received the CPP disability benefit from September 2006 to September 2014 for a period totalling 97 months. By excluding these months, his contributory period is reduced to 467 months.
- General drop-out provision – The Appellant's contributory period is reduced by another 15 percent, comprising the months when his earnings were at their lowest. Accordingly, the contributory period is reduced by 71 months, and his

⁸ See Minister's letter dated January 10, 2022, GD6.

⁹ See CPP, section 48.

adjusted pensionable earnings are reduced by a corresponding \$78,254.¹⁰ That leaves a contributory period of 396 months and total adjusted pensionable earnings in the amount of \$1,336,80512.

– **The Appellant’s retirement pension is calculated using his adjusted pensionable earnings and contributory period**

[25] A CPP retirement pension payable at age 65 is equal to 25 percent of the average adjusted monthly pensionable earnings that were made during a person’s contributory period.

[26] The basic formula for calculating a retirement pension is as follows:

$$25\% \times (\text{total adjusted pensionable earnings} - \text{drop-out earnings}) \div (\text{number of contributory months} - \text{number of drop-out months})$$

[27] Using the Appellant’s variables:

$$25\% \times \$1,336,80512 \div 396 = \$843.9495.$$

[28] Therefore, the Appellant’s monthly retirement pension was \$843.9495 as of October 2014, his first month of eligibility. This amount was further adjusted to account for the loss of entitlement that he would have incurred during the time he was receiving his CPP disability pension. This was done by applying a factor called the pension index ratio, which resulted in an increase to \$970.9354 as of October 2014, with annual adjustments applied for inflation at the beginning of each year.

Conclusion

[29] The Appellant did not identify grounds to rebut the presumption that his ROE is accurate. The Minister rightly used the information in that ROE to calculate the Appellant’s CPP retirement pension using the formula contained in the CPP. I see nothing to suggest that the Minister performed that calculation in correctly.

¹⁰ This includes 47 months from October 1967 to October 1971 and 24 months from January 1981 to December 1982.

[30] The Appellant is not entitled to an increase in his monthly pension amount. The appeal is dismissed.

A handwritten signature in blue ink, appearing to read "J. P. [unclear]", written in a cursive style.

Member, Appeal Division