Citation: *AJ v Minister of Employment and Social Development*, 2023 SST 1711

Social Security Tribunal of Canada
General Division – Income Security Section

Decision

Appellant:	A. J.
Representative:	John R. Evans
Respondent:	Minister of Employment and Social Development

Decision under appeal:	Minister of Employment and Social Development reconsideration decision dated March 21, 2023 (issued by Service Canada)

Tribunal member:	James Beaton
Type of hearing:	In writing
Decision date:	November 29, 2023
File number:	GP-23-1060

Decision

[1] The appeal is dismissed.

[2] The Appellant, A. J.,[1] isn't eligible for a Canada Pension Plan (CPP) death benefit or survivor's pension in respect of her deceased spouse, M. R. This decision explains why I am dismissing the appeal.

Overview

[3] M. R. died on October 29, 2014. The Appellant applied for a CPP death benefit and survivor's pension on September 27, 2017.[2]

[4] The Minister of Employment and Social Development refused her applications because M. R. had not made enough years of contributions to the CPP to qualify for either benefit.

[5] The law says he had to contribute at least 1/3 of the years included "either wholly or partly" within his contributory period. His contributory period began when he turned 18 in 1990 and ended when he died in 2014.[3] So there are 25 years included either wholly or partly within his contributory period. One-third of 25 is 8.3 years. The Minister rounded this up to nine years. He had to contribute in at least nine years—but he only contributed in eight.

[6] The Appellant appealed the Minister's decision to the Social Security Tribunal's General Division.

What I have to decide

[7] I have to decide whether the Appellant is eligible for a CPP death benefit or survivor's pension.

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[1] This appeal was incorrectly recorded as an appeal by the Estate of M. R. In fact, the appeal was made by A. J. (GD1). The appeal record has been changed to reflect the correct appellant.
[2] See GD2-4 to 13.
[3] See sections 44(1)(c), (d), 44(3), and 49 of the *Canada Pension Plan*.

Reasons for my decision

[8] The Appellant's representative challenges the Minister's decision on the following grounds:

1) Based on rules of statutory interpretation, M. R.'s contributory requirement should be rounded down to eight years instead of up to nine years.
2) M. R.'s record of earnings should be amended to reflect additional contributions in 2006 and 2007.
3) I should allow the appeal for compassionate reasons.[4]

[9] I will address each of the Appellant's arguments separately.

– **Contributory requirements must be rounded up**

[10] The Federal Court of Appeal expressed an opinion on whether contributory requirements should be rounded up or down in a case called *Skoric*. The Court said that the words "either wholly or partly" direct the Minister and the Tribunal to round up:

> … the statute does not permit a part of a year of a minimum qualifying period to be 'rounded down' to the nearest whole number if that would result in a period that was less than the statutorily required one third of the contributory period. Whether the part year is more or less than half seems irrelevant for this purpose.[5]

[11] The representative argues that 8.3 would normally be rounded down to eight according to typical mathematical conventions. Despite that, I have to follow decisions of the Federal Court of Appeal. M. R.'s contributory requirement must be rounded up to nine years.

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[4] The Appellant's representative's submissions are at GD1 and GD8.
[5] See *Minister (Human Resources Development) v Skoric*, [2000] 3 CF, 2000 CanLII 17109 (FCA) at paragraph 39.

– Neither the Minister nor the Tribunal can amend a record of earnings

[12] The Appellant wants me to amend M. R.'s record of earnings to reflect contributions to the CPP that she says were made in 2006 and 2007. I can't do this.

[13] Sections 97(1) and (2) of the *Canada Pension Plan* say an entry in a record of earnings is "conclusively presumed to be accurate and may not be called into question" after four years. The only exception is if "it appears to the Minister" that the entry is lower than it should be. That exception doesn't apply to this case. Even so, it is ultimately the Minister of National Revenue, not the Minister of Employment and Social Development or the Tribunal, that records entries in a record of earnings.[6]

[14] In this case, M. R.'s estate already asked the Minister of National Revenue to amend the record of earnings. The Minister of National Revenue refused because more than 10 years had passed.[7] The Minister of Employment and Social Development, and the Tribunal, must accept the record of earnings as it is.

– The Tribunal can't make decisions on compassionate grounds

[15] The Federal Court confirmed in a case called *Miter* that the Tribunal has no equitable jurisdiction. This includes the power to make a decision on compassionate grounds.[8] This means the Tribunal must act within the four corners of its governing legislation. The Tribunal's governing legislation only allows the Tribunal to make decisions that the Minister of Employment and Social Development could have made.[9] Because the Minister can't make decisions on compassionate grounds, neither can the Tribunal.

[16] The Appellant's representative said the Federal Court's statement is incorrect. He offered three cases to support that this Tribunal does have equitable jurisdiction. All of those cases are about the doctrines of issue estoppel or *res judicata*. In simple terms,

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[6] See *Walters v Minister (Employment and Immigration)*, [1996] FCJ No 176 (FCA) and *KS v Minister (Human Resources and Skills Development)*, 2015 SSTGDIS 14.
[7] See GD2-30 and 31.
[8] See *Miter v Canada (Attorney General)*, 2017 FC 262.
[9] See sections 54(1) and 64 of the *Department of Employment and Social Development Act*.

these doctrines allow the Tribunal to decline to decide an appeal where the same issue has already been decided.

[17] Contrary to the representative's argument, issue estoppel and *res judicata* are **not** equitable doctrines. They are common-law doctrines.

[18] The Supreme Court of Canada made this clear in one of the cases referred to by the representative. In *Danyluk*, the Court quoted Justice Finch's summary of the law of issue estoppel. Justice Finch called issue estoppel "an equitable doctrine." Immediately after quoting Justice Finch, the Court said Justice Finch's summary was "a correct statement of law" **except** that issue estoppel "is generally considered a common law doctrine …"[10]

[19] In a more recent case, the Supreme Court of Canada referred to *res judicata* and issue estoppel as common-law doctrines.[11]

[20] Although they involve the exercise of discretion, they aren't equitable powers. They don't open the door for the Tribunal to consider compassionate grounds, or any grounds beyond what the law sets out, when it makes decisions.

[21] The other two cases cited by the representative are Ontario Labour Relations Board cases dealing with issue estoppel.[12] The *Danyluk* case shows that their comments about issue estoppel being an equitable doctrine are inaccurate. Regardless, those cases are not applicable to the Tribunal, whereas *Miter* is. The representative gave no compelling reason why I can ignore *Miter*.

Conclusion

[22] I find that the Appellant isn't eligible for a CPP death benefit or survivor's pension.

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[10] See *Danyluk v Ainsworth Technologies Inc*, 2001 SCC 44 at paragraph 63.
[11] See *Toronto (City) v CUPE, Local 79*, 2003 SCC 63 at paragraph 18.
[12] See *Kashruth Council of Canada v Director of Employment Standards*, 2015 CanLII 28614 (ON LRB) and *Tempest Global Telecom Inc v Kelly Maddison*, 2016 CanLII 44743 (ON LRB).

[23] This means the appeal is dismissed.

James Beaton

Member, General Division – Income Security Section