



Citation: *SP v Minister of Employment and Social Development*, 2024 SST 58

Social Security Tribunal of Canada Appeal Division

Leave to Appeal Decision

Applicant: S. P.

Respondent: Minister of Employment and Social Development

Decision under appeal: General Division decision dated October 13, 2023
(GP-23-985)

Tribunal member: Kate Sellar

Decision date: **January 19, 2024**

File number: AD-24-69

Decision

[1] I'm refusing the Claimant leave (permission) to appeal. The appeal will not go ahead to the next step. These are the reasons for my decision.

Overview

[2] S. P. (Claimant) was married in December 1976. She separated in March 2001 and divorced in November 2003.

[3] The Claimant applied for a Canada Pension Plan (CPP) credit split (also called a division of unadjusted pensionable earnings, or DUPE) in July 2019. She was already receiving a CPP retirement pension at the time. She says she only applied for the credit split because someone from Service Canada told her she would receive more money if she did.

[4] The Minister of Employment and Social Development (Minister) approved the application. The former couple's CPP credits were divided between them for the years 1976 through 2000.

[5] Because of the credit split, the amount of the Appellant's retirement pension went down, not up. She asked the Minister to reconsider its decision, and the Minister didn't change its position. She appealed to this Tribunal. The General Division dismissed her appeal, finding that the credit split cannot be reversed.

Issues

[6] The issues in this appeal are:

- a) Has the Claimant raised an arguable case that the General Division made an error?
- b) Does the application set out evidence that wasn't presented to the General Division?

I'm not giving the Claimant permission to appeal

[7] I can give the Claimant permission to appeal if the application raises an arguable case that the General Division:

- didn't follow a fair process;
- acted beyond its powers or refused to exercise those powers;
- made an error of law;
- made an error of fact; or
- made an error applying the law to the facts.¹

[8] I can also give the Claimant permission to appeal if the application sets out evidence that wasn't presented to the General Division.²

[9] Since the Claimant hasn't raised an arguable case and hasn't set out new evidence, I must refuse permission to appeal.

No arguable case for an error

[10] The Claimant appealed the General Division decision because she says she's entitled to the amount of retirement pension payments she received before the credit split. She doesn't understand how or why the amount of her pension payments was decreased. She would like to go back to receiving the payments she received before the credit split.³

[11] The Claimant hasn't raised an arguable case for an error by the General Division. The General Division explained the following:

¹ See section 58.1(a) and (b) in the *Department of Employment and Social Development Act (Act)*.

² See section 58.1(c) in the Act.

³ See AD1-3.

- The Claimant applied to split her pension credits (she did this because she believed it would increase her monthly pension payment amount).⁴
- The CPP says the credit split **shall** take place if the Minister is informed of a divorce and receives certain information.⁵
- The Claimant is divorced, and she provided the information to the Minister (the application for the credit split, the declaration that she was married, and the divorce certificate).⁶
- The credit split must take place in the Claimant's situation.⁷
- There are only two situations in which the Minister can refuse to allow the credit split, but neither applies here. First, the Minister can refuse to allow the credit split when the payments to both people decrease because of the credit split. But in this case, only the Claimant's payments went down (the Claimant's former spouse didn't apply for the retirement pension). Second, the Minister can refuse to allow the credit split when, in certain situations, the couple make a written agreement before their divorce not to split the pension credits. The Claimant didn't have that kind of agreement before the divorce.⁸
- The credit split started and ended on the correct dates. The credits were split from January 1976 (the year they got married) to December 2000 (the end of the year before they stopped living together).⁹

[12] The Claimant hasn't raised an arguable case that the General Division made an error. The General Division applied the law about splitting pension credits to the

⁴ See paragraph 4 in the General Division decision.

⁵ See paragraph 10 in the General Division decision, applying section 55.1(a) of the *Canada Pension Plan* (CPP), and sections 52 and 54 of the *Canada Pension Plan Regulations*.

⁶ See paragraph 11 in the General Division decision.

⁷ See paragraph 11 in the General Division decision.

⁸ See paragraphs 13 and 14 in the General Division decision, applying sections 55.1(5) and 55.2(3) of the CPP.

⁹ See paragraphs 15 and 16 in the General Division decision, applying section 55.1(4) and 78.1 of the CPP.

Claimant's situation. There's no argument here that the General Division misunderstood what the law says about when credit splits must take place. There's no argument here that the General Division misunderstood the Claimant's situation: she provided the Minister with the information that meant that the credit split had to happen. She was not in one of the two situations in which the Minister can make an exception to the credit split rule.

[13] I've reviewed the record. I'm satisfied that there's no other evidence that the General Division ignored or misunderstood that could impact the result for the Claimant.¹⁰

No new evidence

[14] The Claimant hasn't set out any evidence that was not already presented to the General Division, so new evidence cannot form the basis for an appeal either.

Conclusion

[15] I've refused to give the Claimant permission to appeal. This means that the appeal will not go ahead.

Kate Sellar
Member, Appeal Division

¹⁰ The Federal Court discussed the need for this kind of review by the Appeal Division in *Karadeolian v Canada (Attorney General)*, 2016 FC 615.