



Citation: *TS v Minister of Employment and Social Development*, 2024 SST 1599

Social Security Tribunal of Canada Appeal Division

Decision

Appellant: T. S.

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

Decision under appeal: General Division decision dated July 26, 2024
(GP-23-2000)

Tribunal member: Neil Nawaz

Type of hearing: Videoconference

Hearing date: December 18, 2024

Hearing participants: Appellant
Respondent's representative

Decision date: December 27, 2024

File number: AD-24-507

Decision

[1] I am dismissing this appeal. The Appellant is not entitled to a Canada Pension Plan (CPP) retirement pension.

Overview

[2] The Appellant is an 89-year-old consultant and entrepreneur who was born in Canada but who has spent much of his working life abroad. He has unsuccessfully applied for the CPP retirement pension three times. On each occasion, Service Canada has refused his application because it has no record of him ever having contributed to the CPP.

[3] This appeal concerns only the Appellant's third application, which was submitted in March 2023.¹ As in his previous applications, the Appellant acknowledges that he has never contributed to the CPP, but he claims that federal payroll deductions for a job he had in the 1950s should have been transferred to the CPP when it was established in 1966. He also claims that he was entitled to the CPP retirement pension because of a reciprocal social security agreement (SSA) that Canada has with Australia, where he worked for several years.

[4] This Tribunal's General Division dismissed the Appellant's claims earlier this year. It found that deductions made before 1966 have no relevance to the CPP. It also found that the Canada-Australia SSA does not apply to the CPP retirement pension.

[5] In August, the Appeal Division granted the Appellant permission to appeal after finding that the General Division might have unfairly refused to consider some of his documents. Earlier this month, I held a hearing to discuss his claim in full.

¹ See the Appellant's application for Old Age, Retirement and Survivors benefits under the Agreement on Social Security between Canada and Australia, date-stamped March 13, 2023, GD2-36. I can't consider the Appellant's previous applications, filed in July 2013 and July 2020, because the Appellant didn't appeal either one to the Tribunal within the statutory deadlines.

Preliminary Matter

[6] On December 15, 2024, a few days before the Appeal Division hearing, the Appellant submitted additional documents to the Tribunal. They arrived after both the filing period, which ended on November 12, 2024, and the response period, which ended on December 13, 2024. Among the documents was an affidavit sworn by the Appellant on December 15, 2024.

[7] At the hearing, I asked the Appellant why he had not submitted this final item of evidence sooner. He replied that he was representing himself and had difficulty getting organized at his age.

[8] Over the Minister's objection, I decided to admit the Appellant's late documents. The affidavit contained no new information and did nothing more than recapitulate facts and arguments that Appellant had submitted on numerous occasions previously. I saw nothing to suggest that accepting this material, however late, would prejudice the Minister.²

Issues

[9] In this appeal, I had to determine whether there was some way for the Appellant to qualify for the CPP retirement pension. To do so, I had to answer the following questions:

- Did the Appellant ever work in Canada? Did he ever make contributions to a Canadian government social insurance plan before the establishment of the CPP? If so, when? Was there a way under the law to "port" such contributions to the CPP, even though it didn't come into existence until years later?

² In admitting the Appellant's late documents, I relied on section 42(2) of the *Social Security Tribunal Regulations*, which requires the Tribunal to consider, among other things, whether the late documents are relevant and whether admitting them would be unfair to one or both parties.

- Whether or not the Appellant can be credited with CPP contributions, does the Canada-Australia SSA assist him in qualifying for a retirement pension? To be specific, what do the SSA's "totalization" provisions mean?

Analysis

[10] I have applied the law to the available evidence and concluded that the Appellant is not eligible for the CPP retirement pension. He has never made any CPP contributions, nor can he be credited with them by other means. Without contributions, the Appellant can't benefit from the Canada-Australia SSA.

The Appellant has no CPP contributions

[11] Both parties agree that the Appellant has never contributed directly to the CPP. The Minister's records indicate that the Appellant has never registered any Canadian employment income or CPP deductions.³

[12] The Appellant claims that he worked for the Federal Department of Fisheries between 1957 and 1959. He recalls that his earnings from that period were subject to payroll deductions, although he can't remember specifically what for. He argues that those payroll deductions should have properly been transferred to the CPP in his name under the *Public Service Superannuation Act* (PSSA).

[13] I don't see any merit to these arguments.

[14] To be eligible for a CPP pension, the Appellant must prove that he is at least 60 years old and a contributor to the CPP.⁴ A contributor is defined as a person who has contributed to the CPP in their capacity as an employed or self-employed person.⁵ The basic monthly amount of a person's CPP retirement pension is a percentage of their

³ See Service Canada Intranet IT Renewal Delivery System printout generated on November 8, 2023, GD2-4.

⁴ See section 44(1)(a) of the *Canada Pension Plan*.

⁵ See section 2 of the *Canada Pension Plan*.

pensionable earnings. If you have no pensionable earnings or CPP contributions, then you don't get a retirement pension.⁶

[15] CPP contributions only count if they are made during the contributory period. The contributory period begins on January 1, 1966, or when a person reaches 18 years old, whichever is later.⁷ The earliest a contributory period can start is January 1, 1966, because that is when the *Canada Pension Plan* came into force.

[16] The Appellant's 18th birthday was in May 1953. Since this occurred earlier than when the CPP's came into force, the Appellant's contributory period began on the later of the potential dates. This means that, under the law, the Appellant could not have made contributions to the CPP before January 1, 1966.

[17] The Appellant provided no objective evidence that he ever worked for the Department of Fisheries or made contributions to some precursor of the CPP. Even if he had, he was unable to point to any legal instrument that would permit him, or the Minister, to port such contributions to the CPP after it was established. The Appellant pointed to the PSSA, but that legislation governs the federal government civil service pension plan, a distinctly different scheme from the CPP. It contains no provisions that allow the transfer of credits from one plan to the other.

[18] In short, the Appellant is not a contributor to the CPP, and he is therefore not eligible for the CPP retirement pension. As I will now explain, his years spent working in Australia don't help him get a retirement pension either.

The Canada-Australia SSA doesn't assist the Appellant

[19] The SSA between Canada and Australia grants the residents of each country reciprocal social security benefits, provided they meet certain conditions. The Appellant argues that Article 9 of the SSA allows him to qualify for CPP benefits, even if he has never made any CPP contributions. He says that the seven years in which he lived and

⁶ See section 46(1)(a) of the *Canada Pension Plan*.

⁷ See section 49 of the *Canada Pension Plan*.

worked in Australia between 1963 and 1971 should be counted toward a retirement pension.

[20] I am not convinced that the SSA says what the Appellant thinks it says.

[21] First, the Article 3 says that the SSA applies to any person who “is making or has made contributions pursuant to the *Canada Pension Plan*.” As we have seen, the Appellant has never made contributions to the CPP.

[22] Next, Article 9 says that, if a claimant is eligible for a CPP benefit based on their Canadian creditable periods alone, eligibility shall be determined by “totalizing” (adding together) their Canadian creditable periods to periods when they worked in Australia. Read in context, this article suggests that, for “totalization” to happen, a claimant must have both Canadian **and** Australian creditable periods. The Appellant has only Australian creditable periods.

[23] Finally, Article 11 says that, if a claimant is eligible for a CPP benefit only because of Article 9’s totalizing provision, the amount of the benefit is based **exclusively** on their CPP pensionable earnings. This means that **only** Canadian earnings can go into a calculation of a CPP retirement pension. Put another way, Australian earnings can be used to establish **eligibility** for a CPP benefit, but they can’t be used to calculate the **amount** of it.

[24] Again, the Appellant has no Canadian earnings for the purposes of the CPP, so he is not eligible for any CPP benefit, which would have to be calculated as “zero” in any event. His seven years of Australian creditable periods would only come into play if he had at least one year of valid CPP contributions and, even then, they would only help him qualify for a CPP benefit that requires a minimum threshold number of years of contributions, such as the disability benefit (four years) or the death and survivor’s benefits (10 years). As it happens, the retirement pension doesn’t come with any minimum threshold, so it is effectively beyond the reach of the SSA.

The Tribunal can't correct the Minister's administrative errors

[25] Finally, the Appellant alleges that Service Canada made an error in processing his application. He says that it caused a delay by misspelling his name in its request to the Australian government for information about his work history.⁸

[26] Based on the material before me, I have no way of confirming whether this allegation is true. But even if it is, I can't intervene.

[27] First, I have concluded that there was no way under the law for the Appellant to get the CPP retirement pension. He can't claim harm for a delay in receiving a benefit that he was never entitled to in the first place.

[28] Second, the Minister's alleged error occurred in October 2020, pursuant to the Appellant's second application. I don't have the authority to consider Ministerial conduct pursuant to any application other than the Appellant's third.

[29] Third, whatever the Minister's administrative errors, they are beyond my jurisdiction. Tribunal is created by legislation and, as such, has only the powers granted to it by its governing statute. The Tribunal is required to interpret and apply the provisions as they are set out in the *Canada Pension Plan*.

[30] The *Canada Pension Plan* says that the Minister may take remedial action if he is satisfied that a claimant was denied a benefit because of erroneous advice or administrative error.⁹ Use of the words "may" and "satisfied" in this provision suggests that such a decision is purely discretionary — the Minister doesn't have to fix his mistake if he doesn't think it is warranted. Case law says that administrative tribunals, such as this one, can't force the Minister to revisit or reverse a decision that he has taken voluntarily.¹⁰ In this case, since the Minister has never admitted to an error, there is nothing I can do to make him correct it.

⁸ See the Appellant's written submission dated December 13, 2024, AD11-2.

⁹ See section 66(4) of the *Canada Pension Plan*.

¹⁰ See *Canada (Minister of Human Resources Development) v Tucker*, 2003 FCA 278.

Conclusion

[31] The Appellant is not entitled to a CPP retirement pension. He has never made any contributions to the CPP, and whatever contributions he made to the public service pension plan in the 1950s can't be credited to his CPP account. Without CPP contributions, the Appellant can't benefit from the Canada-Australia SSA.

[32] The appeal is dismissed.



Member, Appeal Division